



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPL FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for landlord's use of property pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. The tenants acknowledged service of the application for dispute resolution.

Issues

Is the landlord entitled to an order of possession for landlord's use of property?
Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy for this two bedroom basement suite began in May 2010 with a monthly rent of \$750.00 payable on the 1st day of each month.

The landlord testified that on October 15, 2016 the tenants were personally served with the 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord states the Notice was issued on the grounds that the landlord's father and landlord's son would be moving into the rental unit. Although the Notice itself does not specify which family member(s) will be moving into the rental unit, the landlords' application for dispute resolution filed December 1, 2016 does state that the rental unit is needed for both the above referenced family members.

The tenant acknowledged receipt of the Notice.

The tenants argue that the landlord issued the 2 Month Notice on the grounds that only the landlord's father would be moving into the rental unit and the father passed away as of December 15, 2016. The tenants argue the son is only 18 years old and the landlord has space for the son upstairs.

The landlord argues that even though the father has passed away, the landlord still requires possession of the rental unit for use by the son who is attending university and requires his own space.

Analysis

I am satisfied that the tenants were personally served with the 2 Month Notice to End Tenancy for Landlord's Use of Property on October 15, 2016, pursuant to section 88 of the Act. I find the notice complies with the form and content requirements of section 52 of the Act.

Although the Notice itself does not specify which family member(s) would be using the rental unit, it does state that "a" family member would be using the rental unit. I accept the landlord's testimony that the Notice was issued for use by the landlord's father and landlord's son. The application which was filed before the landlord's father passed away also supports the landlord's argument that the Notice was intended for use by both these family members.

Pursuant to section 49 of the Act, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. If, as in the present case, the tenant does not make an application for dispute within fifteen days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

As the Notice was served on October 15, 2016, the tenants had until October 30, 2016 to file an application to dispute the Notice. As the tenants did not file an application within this period, the tenants were conclusively presumed to have accepted the tenancy will end on the effective date of the Notice. The fact that the landlord's father passed away after the timeline permitted to file a dispute, has no effect on the conclusive presumption under the Act.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. The landlord is granted a monetary order in this amount.

If the rental unit is not utilized by the landlord for the stated purpose, the tenants would be able to make an application pursuant to section 51 of the Act which provides as follows:

If steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 09, 2017

Residential Tenancy Branch