



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPL MNDC 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;
- a monetary order for compensation for loss pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on January 18, 2017, he personally served the tenant F.R. with a copy of the Application for Dispute Resolution and Notice of Hearing.

Based on the above evidence, I am satisfied that the tenant F.R. was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenants.

In the hearing, the landlord advised he was withdrawing his application for a monetary order and was only seeking an order of possession.

Issues

Is the landlord entitled to an order of possession for landlord's use of property?

Background and Evidence

The tenancy began approximately 13-14 years ago with a current monthly rent of \$1160.00 payable on the 1st day of each month. The tenants paid a security deposit of \$580.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on November 5, 2016 the tenants were personally served with the 2 Month Notice to End Tenancy for Landlord's Use of Property. A Proof of Service form of the

Notice to End Tenancy was provided on file signed by the tenant I.R. acknowledging receipt. The notice has an effective date of March 1, 2017.

The landlord testified that on December 1, 2016, the tenant I.R. gave notice over the telephone that they would be moving out at the end of December 2016 and did not pay rent for this month. The landlord testified that the tenants moved across the street on December 31, 2016. The tenants moved most of their stuff but have not yet returned the house keys and some items still remain in the house.

Analysis

I am satisfied that the tenants were served with the 2 Month Notice to End Tenancy for Landlord's Use of Property on November 5, 2016. I find the notice complies with the form and content requirements of section 52 of the Act.

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, March 1, 2017. In this case, I accept the landlord's evidence that the tenants provided notice to vacate on December 31, 2016 prior to the effective date of the Notice and the landlord was entitled to possession on this earlier date.

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

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.

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: February 09, 2017

Residential Tenancy Branch