



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPM

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for a mutual agreement to end the tenancy, pursuant to section 55.

While the landlord's agent, SM ('landlord's), attended the hearing by way of conference call, the tenants did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package on February 17, 2017 by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with the landlord's application on February 22, 2017, five days after its registered mailing.

The landlord's agent testified that the both parties had signed a Mutual Termination Agreement on February 1, 2017, which stated that the both parties agreed that the tenancy would end at 1:00 p.m. on February 28, 2017. The landlord's agent indicated in the hearing that a subsequent oral agreement was made to amend the termination date to March 31, 2017, and the landlord is seeking an Order of Possession for April 2, 2017 at 1:00 p.m.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The landlord's agent provided the following, sworn undisputed testimony during the hearing. The tenants are on a month-to-month tenancy with monthly rent in the amount of \$1,200.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$600.00 for this tenancy. The tenants continue to reside in the rental unit.

Both parties had agreed to end the tenancy at the end of February 2017, but the tenants had difficulty finding new housing. The landlord had agreed, verbally, to amend the Mutual Termination Agreement to allow the tenants to stay until March 31, 2017, and the landlord is seeking an Order of Possession for April 1, 2017 to allow the tenants adequate time to move out. The tenants have paid all outstanding rent up to, and including, March 2017 rent for use and occupancy only. The landlord submitted a copy of the Termination Agreement in their evidence, with the original move out date of February 28, 2017.

Analysis

The landlord's agent, SM, provided undisputed testimony at this hearing, as the tenants did not attend. I find the Termination Agreement submitted in the landlord's agreement to be valid as it is signed by both parties. I accept the agent's testimony that both parties had mutually agreed to end this tenancy on March 31, 2017 as per section 44(1)(c) of the *Act*. Accordingly, I allow the landlord's application for an Order of Possession for April 1, 2017 at 1 p.m.

Conclusion

I grant an Order of Possession to the landlord which is to take effect **at 1 p.m. on April 1, 2017**. Should the tenants or anyone on the premises 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: March 17, 2017

Residential Tenancy Branch