



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

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 49.

The tenants did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord's daughter attended as a witness.

The landlord provided undisputed testimony that he served each tenant with a copy of the 2 Month Notice to End Tenancy for Landlord's Use in person. The landlord submitted 2 "receipts" that referred to the delivery of the Notice to End Tenancy and were signed by each tenant, acknowledging their receipt. I find that each tenant was duly served with the 2 Month Notice to End Tenancy on December 31, 2016.

The landlord provided undisputed testimony that the tenants were each individually served with a copy of his Application for Dispute Resolution by registered mail on March 3, 2016. The landlord submitted as evidence a copy of the Canada Post registered mail receipts and tracking information. I find that each tenant was deemed served with the landlord's Application for Dispute Resolution on March 8, 2016 (5 days after its registered mailing).

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Landlord's Use?

Background and Evidence

The landlord gave evidence that the residential tenancy agreement began on December 1, 2015. A copy of the tenancy agreement as well as an addendum to the agreement

was submitted for this hearing by the landlord. The rental amount for this unit was established at \$800.00. The landlord testified that a \$200.00 pet damage deposit had been refunded to the tenants during the tenancy. The landlord testified that he continued to hold the \$400.00 security deposit paid by the tenants at the outset of the tenancy.

The landlord applied for an Order of Possession for Landlord's Use. The 2 Month Notice to End Tenancy was issued on December 31, 2015 in person to both tenants. The landlord's 2 Month Notice, entered into written evidence by the landlord, identified the following reason for seeking an end to this tenancy:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member ... of the landlord or the landlord's spouse...

In support of the landlord's application for an Order of Possession based on a 2 Month Notice, the landlord's daughter provided sworn undisputed testimony at this hearing. She testified that her mother assists with childcare and that she wants to be closer to her mother for that purpose. She also testified that, as her father gets older, she wants to offer assistance to her parents on a regular basis. She testified that she has already given her notice to vacate at her rental unit but that her own landlord has allowed her to overstay while her father makes this application.

The landlord testified that he has had limited contact with the tenants since he served his 2 Month Notice to End Tenancy. The landlord's daughter (witness) testified that one of the tenants does not wish to vacate the premises; that he is very angry and the police have been called on at least one occasion because of his behaviour at the residence. Both the landlord and his daughter testified that the tenants have not paid March 2017 rent although they continue to reside in the rental unit. The landlord's daughter testified that one of the tenants has stated he will refuse to move.

Analysis

Neither tenant has made an application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property. In accordance with section 49(9) of the *Act*, the tenants' failure to apply to dispute the notice within fifteen days led to the end of the tenancy on February 28, 2016. The tenants were both required to vacate the rental premises by that date. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

While the tenant did not attend to question the motives of the landlord, I will note out of an abundance of caution that I accept the testimony of the landlord and his daughter regarding the plans for the daughter to move into the rental unit. I find that there is no evidence of malice or ulterior motive on the part of the landlord. The testimony of both the landlord and the landlord's daughter were straight forward, clear and without internal contradiction. I accept the evidence of the landlord that the daughter and her children intend to occupy the unit.

Pursuant to section 49 of the Act and as the landlord satisfied the burden of proof regarding service of documents and the validity of the 2 Month Notice, I grant that the landlord's application for an Order of Possession pursuant to section 49 of the Act.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in 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 28, 2017

Residential Tenancy Branch