



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPERTIES CANADIAN LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 3, 2017 (the "Application"). The Landlord applied for an order of possession based on a Mutual Agreement to End a Tenancy, dated February 16, 2017 (the "Agreement to End").

The Landlord was represented at the hearing by S.M. and C.G. The Tenants attended the hearing on their own behalves and were assisted by D.E., a family member. All parties giving testimony provided a solemn affirmation.

The Landlord testified that the Tenants were served with the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by posting a copy to the door of the Tenants' rental unit on April 6, 2017. Although posting a copy of an application for dispute resolution to the door of a rental unit is not an accepted method of service, the Tenants acknowledged receipt, were in attendance at the hearing, and submitted documentary evidence in response to the Landlord's Application. No issues were raised with respect to service of these documents. Pursuant to section 71(2) of the *Act*, I find the Landlord's Application package was sufficiently served for the purposes of the *Act* on April 6, 2017.

The Tenants' documentary evidence in response to the Landlord's Application was received at the Residential Tenancy Branch on May 5, 2017. The Landlord's agents denied receipt of this evidence, and D.E. acknowledged the documentary evidence was not served on the Landlord in accordance with the Rules of Procedure. Accordingly, the Tenants' documentary evidence has not been considered in reaching a decision, although I also find it would not have impacted the outcome in any event.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord submitted into evidence a copy of the signed tenancy agreement between the parties. It confirms the tenancy began on March 1, 2015. Rent in the amount of \$850.00 per month is due on or before the first calendar day of each month. The Tenants paid a security deposit of \$425.00.

On behalf of the Landlord, G.G. testified that a notice to end tenancy was issued by the Landlord in early 2017, due to disruptions caused by the Tenants. However, as a result of discussions between C.G. and C.M., the Landlord agreed to extend the tenancy to March 31, 2017, at 1:00 p.m. The agreement was reduced to writing. A copy of the Agreement to End, signed by C.M., was submitted into evidence by the Landlord.

In response to the evidence submitted by the Landlord, D.E. acknowledged that C.M. signed the Agreement to End. However, she stated that the Tenants are elderly, have a number of health issues, and have nowhere to go. She also suggested the Agreement to End was signed under duress as the Tenants were being threatened with eviction. D.E. also suggested the capacity of the Tenants was an issue. The Tenants have been looking for alternate accommodation.

In reply, C.G. testified to her belief that C.M. understood what she was signing. According to C.G., there was some back-and-forth between them about whether or not C.M. would sign the Agreement to End, until she did so on February 16, 2017.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 55(2)(d) of the *Act* states:

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

...

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

[Reproduced as written.]

I find that the Landlord and C.M. agreed in writing that the tenancy would end on March 31, 2017, at 1:00 p.m. Although the Agreement to End was not signed by L.M., the Landlord is entitled to rely on it. However, the Tenants have refused to vacate and continue to occupy the rental unit.

With respect to submissions, made by D.E. on behalf of the Tenants, that capacity and duress should negate the Agreement to End, I find there is insufficient evidence before me to conclude this should be the outcome. The Tenants signed the tenancy agreement and have paid rent since the tenancy began, received and responded to the Landlord's Application by submitting documentary evidence, attended the hearing, provided testimony with the assistance of D.E., and have been looking for alternate accommodation. These factors suggest, and I find, that C.M. was aware of the implications of signing the Agreement to End. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

In addition, having been successful, I find the Landlord is entitled to recovery the \$100.00 filing fee paid to make the Application, which I order may be retained from the security deposit.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in 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: May 8, 2017

Residential Tenancy Branch