



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 55;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant acknowledged service of the application for dispute resolution and evidence package.

Issues

Is the landlord entitled to an order of possession for landlord's use of property (the "2 Month Notice")?

Background and Evidence

The tenancy was in place when the landlord purchased the property in September 2015. The current monthly rent is \$500.00 payable on the 1st day of each month.

The landlord S.R. testified that on March 31, 2017 the tenant was personally served with the 2 Month Notice. S.R. testified that on March 31, 2017, the tenant had come to their door to pay the rent for April 2017 and was personally handed the 2 Month Notice. The tenant was asked to sign acknowledging receipt of the 2 Month Notice but he refused to sign. On the same date, the landlord sent the tenant an e-mail as confirmation that he was personally handed the 2 Month Notice. The landlord submitted a copy of this e-mail as evidence. The landlord also submitted a response e-mail from the tenant dated April 2, 2017 by which the tenant proposed to sign a significant rent increase in order to continue the tenancy.

The landlord S.A.R testified that on March 31, 2017 he witnessed his wife S.R. personally hand the 2 Month Notice to the tenant when he came to the door to pay his rent. S.A.R. testified that the tenant took the 2 Month Notice with him.

The tenant disputed receipt of the 2 Month Notice. The tenant testified that on April 1, 2017 he was verbally told to move-out and he was asked to sign a document but was not physically handed any document. The tenant testified that he only received the 2 Month Notice on June 15, 2017 as part of the landlord's evidence package for this hearing.

The tenant further argues that he is in a five year fixed term contract which was entered into with the previous landlord. The tenant submitted a copy of the contract as evidence.

In response the tenant's argument that he is in a five year fixed term contract, the landlord S.R. testified that the tenant only provided a copy of his contract with the previous landlord only 7 days prior to the hearing. The landlord testified that they were not advised by their realtors at the time of purchasing the rental property that there was any fixed term contract. The landlord also submitted a signed statement from the previous owners stating they had initially entered into a 2 year contract with the tenant which ended prior to them selling the home and the tenancy was then on a month-to-month basis. As per this statement, the previous owners allege the five year contract submitted by the tenant is forged and not a valid agreement.

Analysis

With respect to the conflicting evidence on the service of the 2 Month Notice, I accept the landlord's testimony and evidence and find the tenant was personally served with the 2 Month Notice on March 31, 2017. I accept the landlord's version of event to be more probable than that of the tenants. The landlord also submitted an e-mail by which they followed up service of the 2 Month Notice on March 31, 2017. I do not accept the tenant's testimony that the landlord attempted to get him to sign a document but did not actually hand him any physical document. Further, the tenant acknowledged that he received at lease received the 2 Month Notice on June 15, 2017 as part of the landlord's evidence package but he still did not make any application to dispute the Notice.

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, May 30, 2017.

The tenant's argument that he is in a five year fixed term agreement which should nullify the 2 Month Notice is dismissed as the tenant should have made an application within the 15 day timeline to dispute the Notice on this ground. In either event, I do not accept the tenant's evidence that there was a five year fixed term agreement. I accept the landlord's testimony that there was no written fixed term contract provided at the time of the sale and the previous owner's statement that a five year fixed term contract did not exist.

I find the 2 Month Notice complies with the form and content requirements of section 52 of the Act. 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 tenant. Should the tenant 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: July 04, 2017

Residential Tenancy Branch