



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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend. The landlord claims that the tenants were served with the notice of hearing package via Canada Post Registered Mail on February 15, 2018. I accept the undisputed affirmed testimony of the landlord and find that the tenants have been properly served as per sections 88 and 89 of the Act. After waiting 11 minutes past the start of the scheduled hearing time, the hearing proceeded in the absence of the tenants.

Preliminary Issue

It was clarified with the landlord regarding the monetary claim of \$15,000.00 that as no losses have yet been incurred, that the landlord's claim is premature. As such, the landlord's monetary claim (MNDC) is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The hearing proceeded on the landlord's request for an order of possession and recovery of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord's use of property?
Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an order of possession for landlord's use of property and a recovery of the \$100.00 filing fee.

The landlord clarified that the named tenants and the previous landlord were siblings. The previous landlord was the executor of the owner who allowed the tenants to reside on the property. The landlord provided undisputed affirmed testimony that a verbal agreement was made by the previous landlord where the tenants were offered a tenancy to reside at the property in exchange for paying the taxes and the mortgage of the property. The named tenants did not pay anything. The property was offered for sale by the executor. The landlord clarified that he is the buyer/new owner of the rental property and that a Contract of Purchase for Sale was completed in which he requested of the seller vacant possession.

The landlord claims that a 2 Month Notice to End Tenancy issued for landlord's use of property (the 2 Month Notice) was served to the tenants on August 24, 2017. The 2 Month Notice was not dated, but set out an effective end of tenancy date of October 31, 2017 and provided one reason listed as:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

In support of this claim the landlord has provided a copy of the 2 Month Notice and a copy of a Contract of Purchase and Sale which a written term which requests that the buyers request that the sellers give the tenants written notice to vacate the property on or before August 31, 2017 to be vacant on October 31, 2017.

I note that although the tenants did not attend a two page handwritten response was submitted. In the response it states that the matter is currently before the Supreme Court of Canada. The landlord disputes this claim stating that the ownership of the property is not in question nor is he aware of the Contract of Purchase for Sale was being challenged. The landlord also provided undisputed affirmed evidence that he is not aware of the tenants' disputing the 2 Month Notice.

Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, I accept the undisputed evidence of the landlord and find that a 2 Month Notice was served to the tenants on August 25, 2017 as per the submitted copy of an incomplete proof of service document which states that the 2 Month Notice was served on August 24, 2017. The landlord submitted a copy of an invoice for document service dated August 25, 2017 for services rendered in serving documents. The landlord has also submitted a copy of the Contract of Purchase for Sale in support of this claim. The landlord is granted an order of possession to be effective 2 days after service upon the tenant as the effective date of the 2 Month Notice has now passed.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: April 17, 2018

Residential Tenancy Branch