



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL

Introduction

The hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession on the basis of a Two Month Notice to End Tenancy for Landlord's Use.

The Landlord stated that on February 11, 2019 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The Tenant acknowledged receipt of these documents.

On February 26, 2019 the Landlord submitted a copy of the Two Month Notice to End Tenancy that is the subject of these proceedings. The Landlord stated that this evidence was served to the Tenant with the Application for Dispute Resolution. The Tenant stated that she has a copy of this document; that she understood this document was directly related to these proceedings; and that it was not served to her with the Application for Dispute Resolution. As the Tenant has a copy of the Two Month Notice to End Tenancy and she was aware that it is the subject of these proceedings, it was accepted as evidence for these proceedings.

On March 06 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on March 09, 2019. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant was not permitted to submit evidence regarding any deficiencies with the rental unit, as that is not relevant to the issues in dispute at these proceedings.

The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on June 01, 2011;
- on October 30, 2018 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property;
- this Notice declared that the Tenant must vacate the rental unit by January 01, 2019;
- the Notice declared that 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;
- rent has not been paid for March of 2019;
- the Landlord did not agree to withdraw this Notice; and
- the rental unit has not been vacated.

The Tenant stated that she did not dispute the Notice to End Tenancy because the Landlord told her that she did not have to move right away. The Landlord stated that sometime in 2018 he told the Tenant she did not have to move prior to Christmas.

The Tenant stated that on February 01, 2019 the Landlord told her that she could take her time moving, although he did not tell her when he expected her to vacate the unit. The Landlord stated that he never agreed to allow the Tenant to remain in the rental unit past January 01, 2019.

Analysis

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On the basis of the undisputed evidence I find that on October 30, 2018 the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which was served pursuant to section 49(4) of the *Act*.

Section 49(8) of the *Act* stipulates that the Tenant had 15 days after receiving the Notice to file an Application for Dispute Resolution to dispute the Notice. On the basis of the undisputed evidence I find that the Tenant has not filed an Application for Dispute Resolution to dispute the Notice.

Section 49(9) of the *Act* stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. As the Tenant did not dispute the Notice I find that the Tenant is conclusively presumed to have accepted that the tenancy ended and that the Tenant must vacate the unit, pursuant to section 49(9) of the *Act*. I therefore grant the Landlord's application for an Order of Possession.

In adjudicating this matter I have placed no weight on the Tenant's testimony that on February 01, 2019 the Landlord told her that she could take her time moving, although a specific end date was not discussed. I placed no weight on this submission, in part, because the Landlord disputed that testimony.

In concluding that no weight should be placed on the Tenant's testimony that on February 01, 2019 the Landlord told her that she could take her time moving out I was heavily influenced by the Tenant's acknowledgement that the Landlord did not agree that she could remain in the rental unit for any specific period of time. I therefore find that even if this conversation occurred, it does not constitute an agreement to reinstate the tenancy or to enter into a new tenancy agreement. Given that the Landlord filed this Application for Dispute Resolution on January 27, 2019, I find it highly unlikely that the Landlord would have agreed to reinstate, or extend the tenancy, four days later.

Conclusion

I grant the Landlord an Order of Possession that is effective on March 31, 2019. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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 12, 2019

Residential Tenancy Branch