



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LADYSMITH FREEHOLDERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession of the rental unit due to a One Month Notice to End Tenancy for Cause (the "Notice") issued to the tenant.

The landlord's agent, the owner of the residential property, and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Neither party raised any concerns or issues with service of the landlord's application, notice of hearing documents, or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit?

Background and Evidence

The written tenancy agreement submitted by the landlord shows a tenancy beginning on January 1, 2019, for a monthly rent of \$800.00, and a security deposit of \$400.00 being paid by the tenant.

In response to my inquiry, the landlord's agent said that the listed landlord on the tenancy agreement sold the residential property to the current owner in February 2019, which explains the difference in the landlord's name and the applicant/landlord.

The landlord's agent said the tenancy started earlier than January 1, 2019, but was not sure of the date.

The landlord submitted evidence that the tenant was served the Notice, dated July 11, 2019, via personal service on that date, listing an effective end of tenancy date of August 11, 2019.

The cause for ending this tenancy marked by the landlord alleged that the tenant is repeatedly late paying rent.

The landlord's additional relevant evidence included a copy of the Notice and rent payment records.

Tenant's response-

The tenant submitted that his tenancy began in 2013.

The tenant agreed that he received the Notice and did not file an application in dispute of the Notice. The tenant also did not dispute the landlord's evidence of late rent payments.

The tenant said his income had been sporadic and explained to the landlord the reasons. He also asked that the tenancy continue until the end of October 2019, as he had paid rent in full for that month.

After the tenant's submissions, the parties agreed that the tenancy will continue until October 31, 2019, at 1:00 p.m. and that the landlord would be granted an order of possession of the rental unit, effective that date and time.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

A One Month Notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date of August 11, 2019, is changed to August 31, 2019.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case August 31, 2019.

Based on the undisputed evidence, I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and that the landlord is entitled to an order of possession of the rental unit.

As the parties agreed that the tenancy will end on October 31, 2019, at 1:00 p.m., I grant the landlord a final, legally binding order of possession for the rental unit, pursuant to section 55(2)(a) of the Act, for that date and time.

If the tenant fails to vacate the rental unit pursuant to the terms of the order after being served with it, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement, such as bailiff fees, are subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession for the rental unit is granted.

The landlord is granted an order of possession of the rental unit effective on October 31, 2019, at 1:00 p.m.

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: October 22, 2019

Residential Tenancy Branch