



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WATERSTOCK PROPERTIES (SOUTHEND VILLAGE) INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: OPM

Introduction

The landlord applied for an order of possession based on a mutual agreement to end tenancy, pursuant to section 55(2)(d) of the *Residential Tenancy Act* ("Act").

An agent for the corporate landlord and an occupant (acting on behalf of the tenant) attended the hearing on January 22, 2021, which was held by teleconference. No issues of service were raised by the parties.

Issue

Is the landlord entitled to an order of possession under section 55(2)(d) of the Act?

Background and Evidence

The tenancy began November 1, 2019. A copy of the Residential Tenancy Agreement was submitted into evidence. Also, in evidence was a copy of a *Mutual Agreement to End a Tenancy* (#RTB-8) form. This agreement was duly executed by both parties on October 30, 2019, and it was agreed by the landlord and the tenant that the tenancy would end (and that the tenant would vacate) on October 31, 2020.

The landlord gave evidence that, despite the agreement, the tenant has remained in the rental unit past October 31, 2020 and is occupying the property as of today's date.

In response, the tenant's representative (the occupant) explained that they have been "trying to get out for a few months now" but have had difficulty finding a place. She mentioned a problem with obtaining a reference letter from their current landlord. The parties briefly discussed the reference letter, but as this is not relevant to determining the issue, I will not reproduce any further evidence on this.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the party making the claim.

Section 55(2)(d) of the Act states that a “landlord may request an order of possession of a rental unit [when] the landlord and tenant have agreed in writing that the tenancy is ended.”

Before me in evidence a copy of a *Mutual Agreement to End a Tenancy*, which was signed by the landlord’s agent and the tenant. It is a legally binding document and puts into effect the event of the tenancy ending on October 31, 2020. That the tenant continued to reside in the rental unit beyond that date is therefore a breach of the agreement. While I am very well aware of the extremely low housing vacancy rate in the province, the difficulty of finding a new home is not a legal defense to not complying with the agreement. With any luck, however, the tenant is able to take possession of a new home on February 1, 2021, as mentioned by his representative.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order of possession.

Conclusion

I grant the landlord an order of possession, which must be served on the tenant, and which goes into effect at 5:00 PM on February 1, 2021. This order 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 under section 9.1(1) of the Act.

Dated: January 22, 2021

Residential Tenancy Branch