



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPB

Introduction

On March 18, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession – Breach of Vacate Clause for the rental unit and an Order of Possession for Landlord’s Use of Property. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenants did not attend at any time during the 20-minute hearing. The Landlord testified that he personally served the Tenants with the Notice of Dispute Resolution Proceeding by hand delivering a copy to the Tenants at the rental unit on March 26, 2021. The Landlord submitted documentary evidence to support his testimony that he had a witness present while he served the Notice of Dispute Resolution Proceeding package to the Tenants. I find that the Tenants have been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord testified that the Tenants were already living in the rental unit when he purchased the residential property in February 2020. The Tenants signed a fixed-term agreement with the Landlord on February 28, 2020 with an end-date of April 30, 2021. The Landlord submitted the Tenancy Agreement that confirmed the Tenants agreed to vacate the rental unit on April 30, 2021 as the Landlords intended on moving into the rental unit on May 1, 2021.

The Landlord stated that he intends on moving his family into the rental unit and has been building a garage on the property and investing in landscaping to ready the property for his family's possession.

The Landlord submitted a Two Month Notice to End Tenancy for Landlord's Use of Property that he served on the Tenants in person, on February 25, 2021. The Landlord stated he provided this to the Tenants to ensure they moved out of the rental unit at the end of the fixed term.

The Landlord stated he loaned the Tenants money to move some of their possessions from the rental unit; however, the Tenants are still occupying the unit. The Landlord is requesting an Order of Possession.

Analysis

Section 13.1(2) of the *Residential Tenancy Regulations* states the circumstances in which a landlord may include, in a fixed term tenancy agreement, a requirement that the tenant vacate a rental unit at the end of the term are that; the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

The *Residential Policy Guideline 30* speaks to fixed term tenancies and states the reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay compensation as required when ending a tenancy under section 49.

Section 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit by making an application for dispute resolution if the tenancy agreement is a fixed term tenancy agreement that requires the tenant to vacate the rental unit at the end of the term.

In this case, based on undisputed testimony and evidence, I find:

- The Landlord and the Tenant entered into a Tenancy Agreement with a vacate clause pursuant to section 13.1(2) of the *Residential Tenancy Regulations*.
- The Landlord is an individual and not a corporate entity.
- That the Landlord intended, in good faith at the time of entering into the tenancy agreement, to occupy the rental unit at the end of the term.
- That one of the Tenants and the Landlord initialed the vacate clause on the Tenancy Agreement. That both of the Tenants signed the Tenancy Agreement.
- That the Tenants are still occupying the rental unit in breach of the Tenancy Agreement, specifically the vacate clause for April 30, 2021.

As such, I grant the Landlord an Order of Possession for the rental unit, pursuant to section 55(2)(c) of the Act.

Conclusion

Pursuant to Section 55(2)(c) of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenants. Should the Tenants 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: May 31, 2021

Residential Tenancy Branch