



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This hearing was convened in response to an application by the Landlord for an order of possession pursuant to the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant’s representative (the “Representative”) confirms receipt of the Landlord’s evidence. The Parties confirm that no hearing devices are being used for the hearing.

Preliminary Matter

The Representative confirms that they are named as executor in the Tenant’s will and both Parties agree to change the name of the Tenant as set out in the application to correctly name the Representative.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started on October 27, 2011. Rent of \$1,015.00 is payable on the first day of each month. The Landlord is holding a security deposit of \$450.00 collected at the outset of the tenancy. On October

30, 2022 the Tenant passed away leaving a roommate in the unit. Following the Tenant's death, the Representative paid the full rent for November 2022 and entered into a mutual agreement with the Landlord to end the tenancy for November 30, 2022. The Representative was not allowed entry by the roommate in November 2022 and has since been unable to collect the Tenant's belongings. Although the Landlord later served the Tenant with a 10-day notice for unpaid December 2021 rent the Tenant did not dispute the notice and does not dispute that the Landlord is entitled to possession of the unit. The Landlord is not seeking any rent from the Tenant and only wants the order of possession.

Analysis

Section 55(2) of the Act provides that a landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

Section 64(3)(c) of the Act provides that subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Although the Landlord served the Tenant with a 10-day notice for unpaid rent given the undisputed evidence that the tenancy ended before the notice was given and given the

undisputed evidence that the Landlord is not seeking any rent from the Tenant, I consider that the Landlord is not entitled to an order of possession on the basis of the notice. However, given that the Landlord has applied for an order of possession, given the undisputed evidence of the mutual agreement ending the tenancy and given that the Landlord is not seeking any unpaid rent from the Tenant, I amend the application to claim the order of possession on the basis of the mutual agreement and I find that the Landlord is entitled to an order of possession on that basis.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of the order on the Tenant. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in 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 Act.

Dated: April 14, 2022

Residential Tenancy Branch