

DECISION

Dispute Codes: O

Introduction

This application was brought by landlord on January 5, 2011 seeking an Order of Possession in support of a Mutual Agreement to End Tenancy signed by both parties on December 6, 2010.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession under the requirements of section 55(2)(d) of the *Act* and, if so, the effective date of such order.

Background and Evidence

This tenancy began on September 1, 2008. Rent is \$1,650 per month and the landlord holds a security deposit of \$850 paid on August 18, 2011.

As a matter of note, this hearing was made more challenging by the fact that the landlord and tenant have been personal friends. In addition, the landlord is anxious to occupy the rental unit as a home for him and his new bride and had ordered furniture on the assumption the unit would be available for occupancy on February 1, 2011 as per the mutual agreement.

The landlord stated that he had advised the tenant of his need for the rental unit in late November, but when the tenant requested formal notice, the landlord, after a number of

attempts to connect with the tenant, finally made contact on December 6, 2010 when the mutual agreement was signed.

The tenant gave evidence that, after signing the mutual agreement, he had learned that the proper procedure for ending a tenancy for landlord use included use of the standard form which provides the information that such notice must be given at least two months in advance and it entitles the tenant to monetary compensation equal to one month's rent.

The tenant expressed the view that he had been misled by the landlord who neither offered nor made him aware of that he was entitled to proper two month notice under section 49 of the and compensation provided by section 51(1) of the Act.

The landlord submits that his telephone conversation and email exchanges with the tenant led him to reasonably deduce that the two friends could, and had, arranged to conclude the tenancy through cooperation.

The landlord submits that the tenant did not tell him until January 3, 2011 that he would not abide by the mutual agreement leading to the present application.

Analysis

In the natural course of affairs, there is a natural assumption that parties of full capacity are free to make agreements and that they be expected to abide by those agreements provided they are made within the law.

An agreement, or parts of it, may be seen to have been made outside the law and unenforceable by the law if there are elements of even innocent misrepresentation within it.

This principal is codified at section 5 of the *Residential Tenancy Act* which states in its entirety:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

While I do not find he did so knowingly or intentionally, I find that the mutual agreement prepared by the landlord did, in fact, contract out of the legislation. If the agreement had included a statement that, by his signature, the tenant waived his rights under the notice period of section 49 and the monetary compensation provision of section 51, then I would find the mutual agreement absolutely binding.

However, by omission of the noted caveats, I find that the landlord failed to state a material fact, which was tantamount to misrepresentation and tainted the agreement.

Consequently, I declined to issue an Order of Possession based on the Mutual Agreement to End Tenancy.

As that put the landlord in a position of having to begin the process again, I offered to assist the parties to settle the dispute as authorized under section 63 of the *Act* to provide the landlord an opportunity to gain earlier possession.

The tenant declined the suggestion that he move on February 1, 2011 as promised if the landlord would return the January rent and the landlord was equally reluctant to return the rent..

The landlord at one point accepted an agreement by the tenant for an Order of Possession effective February 28, 2011 but declined to offer the monetary compensation.

After much vacillation, the parties agreed that:

1. The landlord would have an Order of Possession effective February 28, 2011.
2. The tenant does not need to pay rent for February 2011.

Conclusion

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on February 28, 2011.

The tenant will owe no rent for February 2011.

January 21, 2011