Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Waterford Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   OPL, FF

Introduction
This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord's use of the property pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant(s) pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:12 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent both tenants 2 Month Notices to End Tenancy for Landlord's Use (the 2 Month Notice) by registered mail on March 25, 2013. He also testified that he sent both tenants copies of the landlord's dispute resolution hearing package by registered mail on May 3, 2013. He provided copies of the Canada Post Tracking Numbers and delivery details for the above registered mailings. He testified that the only package sent to the tenants that was picked up by the tenants was the 2 Month Notice sent to the female tenant. The others remain undelivered. In accordance with sections 88, 89 and 90 of the *Act*, I am satisfied that the above documents were deemed served to the tenants on the fifth day after their registered mailing.

Issues(s) to be Decided
Is the landlord entitled to an Order of Possession for landlord's use of the property? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence
This periodic tenancy commenced on June 1, 2009. Monthly rent is set at $750.00, payable in advance on the first of each month. The landlord continues to hold the tenant's $375.00 security deposit paid on June 1, 2009.

The landlord testified that the 2 Month Notice was issued to enable the landlord to conduct extensive repairs to this building. The landlord said that once all tenants have vacated this multi-tenanted, rental building the landlord will be able to remove the roof and complete other extensive repairs to balconies and the rest of the building.

Analysis

The tenants have not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice. In accordance with section 49(9) of the *Act*, the tenants' failure to take this action within fifteen days leads to the end of their tenancy on May 31, 2013 and requires them to vacate the rental premises by that date. Due to the timing of this hearing so near to the effective date of the 2 Month Notice, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on June 3, 2013. The landlord will be given a formal Order of Possession which must be served on the tenant(s) as soon as possible. If the tenants do not vacate the rental unit by the time and date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord has been successful in this application, I allow the landlord to recover the $50.00 filing fee from the tenants.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective on June 3, 2013.   Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to recover the $50.00 filing fee for this application by retaining $50.00 from the tenants' security deposit. The revised value of the tenants' security deposit is reduced from $375.00 to $325.00, plus applicable interest.

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 30, 2013

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Residential Tenancy Branch