



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOWN OF QUALICUM BEACH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with a landlord's Application for an Order of Possession for landlord's use of property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession under the Act?

Background and Evidence

The tenant has been occupying a suite on the property for several years under a verbal agreement. The tenant was permitted occupancy in exchange for caretaking duties.

At the end of May 2013 the landlord issued a letter to the tenant informing the tenant to cease caretaking duties and vacate the rental unit by the end of August 2013. The tenant did not vacate the property.

On October 30, 2013 the landlord obtained a demolition permit to demolish the living accommodation occupied by the tenant. Also on October 30, 2013 the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) with a stated effective date of December 31, 2013. The Notice indicates the reason for ending the tenancy is that: *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

Included in the landlord's evidence were copies of: the 2 Month Notice, the demolition permit, and a site report of the property including several photographs.

The tenant did not file an Application for Dispute Resolution to dispute the Notice. The tenant had not provided any documentation for this proceeding. The tenant testified that he entered into a verbal agreement to occupy the rental unit “in perpetuity” with the landlord’s former representatives. The tenant stated that in response to receiving the letter in May 2013 and the 2 Month Notice in October 2013 he communicated to the landlord, in writing, indicating he did not agree with the landlord’s decisions. The tenant explained that he did not file to dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch as he was uncertain the Residential Tenancy Act applied to their agreement.

The landlord requested an Order of Possession effective as soon as possible. The tenant requested he be permitted occupancy until February 15, 2014 or preferably February 28, 2013 if the Notice was upheld.

Analysis

The Act applies to residential tenancy agreements, residential property, and rental units in the Province unless the living accommodation is specifically excluded from the Act under section 4. The Act defines tenancy agreement as an agreement between a landlord and tenant, whether it is oral or written, express or implied with respect to the tenant’s occupation of a rental unit, and includes a licence to occupy a rental unit. A rental unit is defined as living accommodation rented or intended to be rented to a tenant. The Act even contemplates scenarios where a person is permitted occupancy of living accommodation as part of an employment contract as evidenced by providing a mechanism to end the tenancy where the employment is terminated.

In the circumstances described to me, I am satisfied that the tenant is occupying a rental unit under a tenancy agreement, as defined by the Act, and that the living accommodation is not excluded under section 4. Therefore, I find the Act applies and I have jurisdiction to consider the landlord’s request for an Order of Possession.

Under the Act, a tenant who receives a 2 Month Notice to End Tenancy for Landlord’s Use of Property under section 49 of the Act has 15 days to file an Application for Dispute Resolution with the Residential Tenancy Branch to dispute the Notice. The Act provides that if a tenant does not file to dispute the Notice within 15 days then the tenant is “conclusively presumed” to have acted that the tenancy will end on the effective date and must vacate the rental unit. This information is communicated to tenants who receive a 2 Month Notice on the second page of the Notice.

The Act provides that I may extend the time to file an Application for Dispute Resolution to dispute a Notice to End Tenancy only in exceptional circumstances but in no circumstance may the extension be after the effective date of the Notice.

In this case, it is undisputed that the tenant received a 2 Month Notice, in the approved form, on October 30, 2013. The tenant did not file an Application for Dispute Resolution with the Residential Tenancy Branch to dispute the Notice and the time for doing so has long since passed. Therefore, I find the tenant is conclusively presumed to have accepted the end of tenancy and must vacate the rental unit.

As the tenancy has come to an end and the tenant is still in possession of the rental unit, I find the landlord entitled to an Order of Possession. I find it reasonable considering the length of tenancy to grant an Order of Possession with an effective date of February 15, 2014. The landlord is provided an Order of Possession with this decision to serve upon the tenant.

Conclusion

The landlord has been provided an Order of Possession effective February 15, 2014 to serve upon the tenant.

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: January 28, 2014

Residential Tenancy Branch

