



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, FF

Introduction

This was a hearing with respect to the landlord's application for an order for possession. The hearing was conducted by conference call. The landlord's representatives called in and participated in the hearing. The tenant did not attend, although he was served with the application and Notice of Hearing sent by registered mail on November 17, 2015 and also posted to the door of the rental unit on November 18, 2015.

Issue(s) to be Decided

Should the landlord be granted an order for possession pursuant to a mutual agreement to end tenancy?

Background and Evidence

The rental unit is an apartment in a subsidized housing complex in New Westminster. The tenancy began in August, 2006. The landlord's representative testified that the tenant has engaged in repeated hostile and aggressive behaviour towards other occupants and staff at the rental property. The landlord has submitted written statements and complaints from other occupants who have been disturbed and frightened by the tenant's conduct. The landlord's employee has complained that the tenant has engaged in stalking behaviour towards her. She feels harassed and fearful for her safety. The tenant has also made racist comments and indecently exposed himself to another occupant of the rental property. The landlord has given the tenant warning letters and has attempted to involve a case manager and mental health workers and the tenant's father to resolve the tenant's unacceptable behaviour and preserve his tenancy. The tenant has rebuffed the landlord's efforts and refused to connect with support workers.

In July 2015 the landlord's representative met with the tenant and his father. The landlord's representative advised the tenant that the landlord intended to serve the tenant with a one month Notice to End Tenancy for cause, or alternatively requested that the tenant agree to move out of the rental unit and sign a mutual agreement to end tenancy. The tenant was given a week to consider the matter and chose to sign the mutual agreement to end the tenancy. He signed the agreement on August 6, 2015 and agreed to move out of the rental unit on September 30, 2015.

The tenant has not moved out. On August 31, 2015 he submitted a letter to the landlord seeking to withdraw his agreement. The tenant suggested that the landlord agreed to find alternate housing for him, but he has not found any other housing. He also said that he should have an extension to his tenancy because he was participating in a mental health program. The landlord replied to the tenant's letter. By letter dated September 1, 2015 the landlord said it had no intention of rescinding the mutual agreement to end the tenancy and if the tenant did not vacate on September 30th as required by the agreement the landlord would apply for an order for possession.

The tenant has not moved out of the rental unit. His rent payments have been accepted: "for use and occupancy only". The landlord's representative testified that the tenant is aware of the landlord's application for an order for possession and of the hearing. The landlord's representative requested an order for possession; he said the landlord was prepared to allow the tenant until the end of February to vacate the rental unit.

Analysis

On August 6, 2015 the tenant signed a mutual agreement to end the tenancy effective September 30, 2015. The tenant sought to withdraw his agreement. The landlord refused to accept his proposal and refused to reinstate the tenancy. Before the tenant signed the mutual agreement he was given time to consider his decision and I find that he was not pressured or coerced to sign the agreement, but he understood that the landlord would take proceedings to evict him for cause if he did not agree to move out.

I find that the tenant is not entitled to unilaterally withdraw or rescind his agreement to end the tenancy. The landlord has explicitly rejected the attempt to rescind the agreement and has requested an order for possession pursuant to the mutual agreement. Section 55 (2) of the *Residential Tenancy Act* provides that a landlord may request an order of possession by making an application for dispute resolution when the landlord and the tenant have agreed in writing that the tenancy has ended.

Conclusion

The tenancy ended by written agreement on September 30, 2015 and I grant the landlord an order of possession effective February 29, 2016 as requested. This order may be filed in the Supreme Court 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 *Residential Tenancy Act*.

Dated: January 15, 2016

Residential Tenancy Branch

