



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, O, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by one of the landlords; one of the tenants and her witness.

I note that the tenant's witness became unruly and disruptive during the hearing. I ordered that he not speak for the duration of the hearing. The witness continued to make comments and use profanity and as such, I ordered that he must leave the room until the hearing was concluded. He did not cause any further disturbances.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 44, 46, 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the tenants and the previous owner of the rental unit on June 27, 2014 for a 6 month fixed term tenancy beginning on July 1, 2014 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the previous owner of the residential property on October 21, 2015 with an effective vacancy date of December 21, 2015 citing that all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord to give the Notice because the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the new owner on January 24, 2016 with an effective vacancy date of February 4, 2016 citing the tenant had failed to pay rent in the amount of \$800.00; and
- A Mutual Agreement to End Tenancy signed by the parties, including the new owner, on January 24, 2016 agreeing that the tenants would vacate the rental unit no later than February 4, 2016 at 2:00 p.m.

The tenant agreed that she had received the 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 21, 2015, however she stated that she did not receive it until nearer the end of November 2015.

The tenant states that she did not move because the landlord would not give her rent back and she needed that money to move out of the rental unit. She also stated the new owner had promised her another \$1,000.00 to move out and they had not paid her for that.

The tenant confirmed that she has not paid any rent since December 2015. She also stated that she wants to move but she cannot find any other accommodation.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit.

Section 49(5) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(6) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

In the absence of any evidence from the landlord that the tenant did not receive the 2 Month Notice issued on October 21, 2015 until "late November 2015", I find the tenant received the 2 Month Notice no later than November 30, 2015. As such, I find the tenant had until December 14, 2015 to file an Application for Dispute Resolution to seek to cancel the Notice. As there is no evidence before me that she did so, I find the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit, pursuant to Section 49(6) of the *Act*.

Section 53 of the *Act* states that if a landlord or tenant gives a notice to end a tenancy on a date that does not comply with the requirements under the relevant Section of the *Act*, the effective date of the Notice is deemed to be changed to the earliest date that

complies with the relevant Section. As such, I find the effective date of the 2 Month Notice is deemed to be changed to January 31, 2016.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$100.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 13, 2016

Residential Tenancy Branch