



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession due to the tenant no longer qualifying for subsidized housing, and to recover the filing fee.

An agent for the landlord (the "agent") and the tenant attended the hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

Both parties confirmed that they received evidence from the other party and had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on August 1, 2012. The parties agree that currently the tenant's portion of subsidized rent is \$320.00 per month due on the first day of each month. A security deposit of \$435.00 was paid by the tenant at the start of the tenancy.

The agent stated that a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") dated July 24, 2013 was served on the tenant by registered mail with an effective vacancy date of September 30, 2013. The tenant could not recall the date she received the 2 Month Notice by registered mail, however did confirm that she

received the 2 Month Notice. The tenant confirmed that she did not file an application to dispute the 2 Month Notice. The cause listed on the 2 Month Notice indicates "The tenant no longer qualifies for the subsidized rental unit".

During the hearing, the tenant testified that her daughter has not lived with her at the rental unit during the tenancy and that she has a court date set for March 2014 to attempt to get custody back of her daughter. The landlord is seeking an order of possession for the rental unit for September 30, 2013.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – The tenant confirmed that she did not dispute the 2 Month Notice dated July 24, 2013 with an effective vacancy date of September 30, 2013. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. In the matter before me, I find the tenant was served with the 2 Month Notice on July 29, 2013, which is five days after the registered mail package was mailed to the tenant. The tenant confirms that she did receive the 2 Month Notice and did not file an application to dispute the 2 Month Notice.

Pursuant to section 49 of the *Act*, when a tenant does not dispute a 2 Month Notice within 15 days of receiving the 2 Month Notice, the tenant is conclusively presumed to have accepted that the tenancy is ending on the effective vacancy date listed on the 2 Month Notice. Therefore, I find the tenant is conclusively presumed to have accepted that the tenancy is ending on the effective vacancy date of September 30, 2013 as the tenant did not dispute the 2 Month Notice. Based on the above, **I grant** the landlord an order of possession **effective September 30, 2013 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**. **I authorize** the landlord to retain \$50.00 from the tenant's \$435.00 security deposit in full satisfaction of the filing fee, which I find leaves the tenant's security deposit balance as \$385.00.

Conclusion

I grant the landlord an order of possession effective September 30, 2013 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I authorize the landlord to retain \$50.00 from the tenant's \$435.00 security deposit as compensation for the recovery of the landlord's filing fee. I find the tenant's security deposit balance is now \$385.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 25, 2013

Residential Tenancy Branch

