



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Check Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* registered mail on May 16, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for landlord's use of property and to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord has provided the following documents as evidence:

- A copy of a tenancy agreement signed by the parties on February 12, 2010 for a month to month tenancy beginning on February 15, 2014 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid; and
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on February 3, 2014 with an effective vacancy date of May 15, 2014 citing the landlord has all the 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.

The landlord submits the notice was served on the tenant on February 3, 2014 by posting it to the rental unit door. The landlord submits that the tenant has failed to move out. The landlord also states the tenant has not returned phone calls or responded to requests posted on the rental unit door to contact the landlord.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or
- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Section 49(8) of the *Act* allows a tenant to dispute a notice to end tenancy under Section 49 within 15 days after the date the tenant receives the notice. Section 49(9) states that if a tenant does not submit an Application for Dispute Resolution seeking to dispute the notice within 15 days the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit by that date.

Based on the landlord's undisputed submissions I find the landlord posted the Notice on the rental unit door on February 3, 2014. I find, therefore, that the Notice is deemed to have been received by February 6, 2014. As such, the tenant had until February 21, 2014 to file an Application for Dispute Resolution seeking to cancel the Notice.

As the tenant has failed to file such an Application I find the tenant is conclusively presumed to have accepted the tenancy was to end and must vacate the rental unit.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails 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 **\$50.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails 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: July 09, 2014

Residential Tenancy Branch

