



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC 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 based on an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 27, 2016 (the "2 Month Notice").

The landlord and translator for the landlord (the "translator") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served only on tenant B.C. as they had information that the female tenant K.F. had already vacated the rental unit. As a result, the name of tenant K.F. will be removed from any resulting orders as tenant K.F. was not served as required by the *Act*.

Regarding tenant B.C., the landlord testified that he was served with the Notice of Hearing, Application and documentary evidence by registered mail. A tracking number was provided orally during the hearing which has been included on the cover page of this Decision for ease of reference. The landlord stated that the registered mail package was mailed on September 20, 2016 which is supported by the online registered mail tracking website. According to the online registered mail tracking website, the registered mail package is close to be returned to sender as the tenant has not picked up the registered mail package. The landlord confirmed that the tenant's name and address match the name of the tenant and the rental unit address and that the tenant continues to occupy the rental unit. Section 90 of the *Act* states that documents served by

registered mail are deemed served five days after they are mailed. Given the above, I find the tenant was deemed served as of September 25, 2016 which is five days after the registered mail package was mailed to the tenant. Given the above, I am satisfied that the tenant B.C. has been sufficiently served as required by the *Act*.

Issue to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 2 Month Notice under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 1, 2012. Monthly rent in the amount of \$915.00 is due on the first day of each month. The landlord stated that the tenant paid a security deposit at the start of the tenancy in the amount of \$475.00 which the landlord continues to hold.

The landlord confirmed service of the 2 Month Notice by posting to the tenants' door on June 27, 2016. The 2 Month Notice had an effective vacancy date of September 1, 2016. The landlord stated that the tenants did not dispute the 2 Month Notice and that tenant B.C. continues to occupy the rental unit. A copy of the 2 Month Notice was submitted in evidence. The landlord is seeking an Order of Possession and the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Analysis

Based on the landlord's undisputed documentary evidence and undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants were deemed served with the 2 Month Notice on June 30, 2016, which is three days after the 2 Month Notice was posted to the tenant's door on June 27, 2016. Pursuant to section 90 of the *Act*, documents posted to the door are deemed served three days later. The tenants did not dispute the 2 Month Notice within 15 days of receiving the 2 Month Notice. Pursuant to section 49 of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the 2 Month Notice which was September 1, 2016.

The tenant continues to occupy the rental unit. Pursuant to section 55 of the *Act*, I grant the landlord an order of possession **effective two (2) days** after service on the tenant. I find the tenancy ended on September 1, 2016. The tenant has been over-holding the rental unit since that date.

Pursuant to section 72 of the *Act*, as the landlord's application was successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee. **I authorize** the landlord to retain \$100.00 from the tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee. As the amount of the tenant's security deposit was previously \$475.00, I find the new balance of the tenants' security deposit is \$375.00.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee.

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: October 5, 2016

Residential Tenancy Branch