



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord's use pursuant to section 55; and
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38.

The tenants did not attend this hearing which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice"), dated March 22, 2016 and providing an end of tenancy date of May 31, 2016 was personally served on the tenants on March 22, 2016. I find that the tenants were duly served with the landlord's 2 Month Notice on March 22, 2016 in accordance with section 88 of the *Act*.

The landlord testified that a second 2 Month Notice to End Tenancy for Landlord's Use (the "Second 2 Month Notice"), dated November 12, 2016 was personally served on the tenants on that same date. I find that the tenants were duly served with the landlord's Second 2 Month Notice on November 12, 2016, again in accordance with section 88 of the *Act*.

The landlord testified that the landlord's application for dispute resolution dated December 5, 2016 was served on the tenants by registered mail sent on December 7, 2016. The landlord provided a Canada Post tracking number as evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed

served with the landlord's application package and evidentiary materials on December 12, 2016, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use?

Is the landlord entitled to retain all or part of the tenants' security deposit?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began four or five years ago. The current rent is \$900.00 payable on the 1st of the month. A security deposit of \$450.00 was paid by the tenants at the start of the tenancy and is still held by the landlord. The tenants continue to reside in the rental unit at the time of the hearing.

The landlord provided only the first page of the March 2 Month Notice to End Tenancy into written evidence. The landlord testified that the reason for ending this tenancy is that she intends to perform repairs and renovations to the rental unit when the tenants have vacated with the goal of selling the property thereafter. The landlord testified that she has no intention of occupying the rental unit. The landlord stated that she has not yet entered into an agreement to sell the property nor has she listed the property for sale. The landlord testified that some of the repairs required include fixing holes and markings on the walls, and addressing damage to the carpets. The landlord entered into written evidence some photographs of the rental unit showing the current state of disrepair.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the 15 days of service granted under section 49(8) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the March 2 Month Notice, May 31, 2016.

The landlord's 2 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. Therefore, I find that the landlord is

entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 2 Month Notice has passed, I issue a 2 day Order of Possession.

In accordance with sections 38 of the *Act*, I allow the landlord to retain the tenants' \$450.00 security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord may retain the tenants' security deposit of \$450.00.

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 17, 2017

Residential Tenancy Branch