



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This was the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an order of possession based on a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to s. 49 of the Act.

The landlord attended the hearing with a witness. The tenant did not attend the hearing.

As the tenant did not attend, service of the landlord's application, filed December 23, and the notice of hearing was considered. Both the landlord and the witness provided affirmed testimony that the witness personally served the tenant with these materials on December 26, 2016. I accept that the tenant was served with the notice of hearing and application in accordance with s. 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the 2 Month Notice?

Is the landlord entitled to return of the filing fee?

Background and Evidence

The landlord testified that the tenant was originally served with another 2 Month Notice to End Tenancy for Landlord's Use of Property on November 16, 2016. However, the first notice did not indicate what use the landlord meant to make of the property. This was drawn to her attention, and the landlord then personally served the 2 Month Notice that is before me on November 23, 2016. This 2 Month Notice indicates that the unit will be occupied by the landlord or the landlord's close family member. It has an effective date of February 1, 2017.

There was no tenancy agreement in evidence. The landlord testified that she inherited this property from her father, and that the current tenant has been living in it since before her father's illness and subsequent death, beginning in or around March of 2010. The current monthly rent is \$475.00, due on the first of the month. The landlord is not aware of any security deposit.

The landlord further testified that she will be moving into the rental unit. She stated that the cost of rent in her area is high, and that it makes better financial sense for her to live in a residence that she owns. She has begun her transition to a new community and is currently renting in a nearby town until she can move into the residence at issue. She was offered and accepted employment in the area, and began in early January of this year.

The landlord also stated that the tenant has not paid rent for January, 2017, as contemplated by s. 51 of the Act, which provides that a tenant in receipt of a 2 Month Notice is entitled to one month's free rent.

Analysis

Section 49 of the Act allows a landlord to end a month to month tenancy for certain specified reasons by giving notice to end the tenancy effective on a 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.

Section 49(3) allows a landlord to end a tenancy in respect of a rental unit if the landlord or a close family member intends in good faith to occupy the rental unit.

Section 49(9) states that, provided a notice complies with s. 52, a tenant who does not make an application for dispute resolution within 15 days of receipt of a notice to end tenancy is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. I find that the landlord's 2 Month Notice complies with s. 52.

As set out above, the tenant was personally served with the 2 Month Notice on December 23, 2016. The tenant did not apply to dispute the 2 Month Notice. The 2 Month Notice has an effective date of February 1, 2017.

Accordingly, the tenant is conclusively presumed under the Act to have accepted that the tenancy ended on the effective date of the notice. The tenant and anyone on the premises are required to vacate the premises by that date and the landlord is entitled to an order of possession effective February 1, 2017 pursuant to s. 55 of the Act.

Conclusion

The landlord's application is allowed.

As the landlord's application is successful and the tenant did not attend, I award the landlord the filing fee in the amount of \$100.00.

I grant an order of possession to the landlord effective at 1:00 pm on February 1, 2017.

Should the tenant or anyone 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: January 31, 2017

Residential Tenancy Branch