



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for an order of possession for landlord's use of property; and for recovery of the filing fee for their application from the tenant.

The landlord appeared at the teleconference hearing with two family members who were in attendance to support the landlord. The tenant did not appear during the hearing which lasted 10 minutes. The landlord gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that the tenant was served with a copy of the landlord's Application and Notice of Hearing in person by leaving a copy with the tenant on February 1, 2017. Taking into account the undisputed testimony of the landlord, I find that the tenant has been duly served with a copy of the landlord's Application and the Notice of Hearing in accordance with section 89 of the *Act* on February 1, 2017.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession for landlord's use?
- Is the landlord entitled to recover the filing fee paid for this application from the tenant?

Background and Evidence

The undisputed testimony of the landlord established that the tenant renewed a one year fixed term tenancy that started on August 31, 2014 by entering into a new one year fixed term tenancy agreement. The new tenancy agreement provides for a one year fixed term tenancy starting on August 31, 2015 and ending on August 31, 2016, with an option to renew the tenancy on a month to month basis. Rent in the amount of \$1,875.00 is due on the first day of each month. The landlord received a security deposit in the amount of \$937.50 when the tenancy started in 2014.

The landlord testified that the tenant was served with a copy of a Two Month Notice to End Tenancy for Landlord's use of Property (the "Two Month Notice") by leaving a copy with the tenant on November 30, 2016. The Two Month Notice is dated November 30, 2016 and required the tenant to move out by January 31, 2017.

The landlord's reason for ending the tenancy in the Two Month Notice is that the rental unit will be occupied by the landlord. The landlord testified that she needs to move into the rental unit for medical reasons. The landlord supplied a letter from a physician which describes the landlord's physical limitations with a recommendation that the landlord move into her rental unit. According to the landlord and her physician, the rental unit is better suited to meet the mobility needs of the landlord in light of the landlord's physical limitations.

The landlord is seeking an order of possession and to recover the \$100.00 filing fee paid for this application from the tenant.

Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the dispute resolution hearing package and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

In accordance with section 88 of the *Act*, I find that the tenant was duly served with the Two Month Notice on November 30, 2016, with an effective date of January 31, 2017. I

also find that the Two Month Notice complies with section 52 of the *Act* and that it is valid.

Section 49 of the *Act* stipulates that a tenant has 15 days from the date of receiving the Notice ending tenancy to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant filed an application to dispute the Notice.

Based on the foregoing, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the Two Month Notice, January 31, 2017. Therefore, I find that the landlord is entitled to an order of possession.

As the landlord's application was successful, I also find that the landlord is entitled to recovery of the \$100.00 filing fee from the tenant.

Conclusion

The landlord is granted a monetary order in the amount of \$100.00 for the filing fee which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **2 days after service of this Order** on the tenant. Should the tenant 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 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: February 28, 2017

Residential Tenancy Branch