



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

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 of property pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

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

The landlord testified that the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") dated November 29, 2016 was personally served on the tenants on that date. I find that the 2 Month Notice was duly served in accordance with sections 88 of the *Act*.

The landlord testified that the landlord's application for dispute resolution dated January 12, 2017 was served on the tenants by registered mail sent on January 13, 2017. The landlord provided two Canada Post tracking numbers as evidence. I find that the landlord's application and evidence were deemed served on the tenants in accordance with sections 89 and 90 of the *Act* on January 18, 2017, 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 recover the filing fee for this application from the tenants?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began in August, 2015. The current rent is \$1,500.00 payable on the first of the month. A security deposit of \$750.00 and a pet damage deposit of \$325.00 were paid by the tenants at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenants did not file an application to dispute the 2 Month Notice. The landlord testified that the tenants have withheld the rent for January, 2017 pursuant to section 51 of the *Act*.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were duly served with the 2 Month Notice on November 29, 2016. I accept the landlord's evidence that the tenants did not dispute the 2 Month Notice within 15 days. 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 2 Month Notice, January 31, 2017. 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.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants 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.

I order the landlord to retain \$100.00 from the tenants' security deposit to recover the landlord's filing fee for this application. I order that the retained value of the security deposit is reduced from \$750.00 to \$650.00.

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: February 7, 2017

Residential Tenancy Branch