



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 landlords' Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by both landlords.

The landlord provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 15, 2017 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Tracking information from Canada Post confirms that on February 15, 2017 the package was accepted by them and a notice was provided to the tenant on February 17, 2017. The tracking information also documents that a final notice was sent to the tenant by Canada Post on February 23, 2017 and that the tenant picked up the package on March 6, 2017.

The female landlord testified that she received a text message from the tenant at 12:47 in which the tenant writes that she "actually just checked the mail last night for the first time". The text goes on to say that the tenant is not sure what she should do about receiving it the day before the hearing.

I note that a review of the audit notes on the file reveals no record that the tenant attempted to call the Residential Tenancy Branch on either March 6, 2017 or March 7, 2017 before the hearing to request a re-scheduling or adjournment. I also note that the tenant chose to not attend this hearing despite receiving the Notice of Hearing documents, even if it were to ask for an adjournment.

As a result, I find the tenant deliberately took action to delay receipt of the landlords' hearing package in an attempt to delay the ability of the landlords to enforce their right to end the tenancy in accordance with the *Act* and to avoid service.

However, based on the landlords' documentary evidence and testimony, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for landlord's use of property; to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following relevant documents:

- A copy of a tenancy agreement signed by the parties on October 15, 2016 for a month to month tenancy beginning on October 15, 2016 for a monthly rent of \$2,300.00 due on the 1st of each month with a security deposit of \$1,150.00 paid; and
- A copy of a 2 Month Notice to End Tenancy dated January 13, 2017 with an effective vacancy date of April 1, 2017 citing the rental unit will be occupied by the landlord or a close family member of the landlord.

The landlords submitted that the Notice was served to the tenant personally on January 14, 2017. The landlords provided a copy of a Proof of Service – Notice to End Tenancy document signed by the tenant acknowledging receipt of the Notice on January 14, 2017.

The Notice itself stated the tenant had the right to dispute the Notice within 15 days of receiving it by filing an Application for Dispute Resolution. There is no evidence before me or any record that the tenant submitted an Application for Dispute Resolution seeking to cancel the Notice at any time after it was served to the tenant.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(8) of the stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

I accept the landlords' undisputed evidence and testimony that the tenant was served and received the 2 Month Notice to End Tenancy for Landlord's Use of Property on January 14, 2017 and that the effective date of the Notice is April 1, 2017. I find the tenant has failed to dispute the Notice within the 15 days allowed and as a result, I find

the tenant is conclusively presumed to have accepted the tenancy will end on April 1, 2017.

Conclusion

I find the landlords are entitled to an order of possession effective **April 1, 2017 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the landlords for this application.

I order the landlord may deduct this amount from the security deposit in the amount of \$1,150.00 in satisfaction of this claim, pursuant to Section 72(2)(b), leaving a balance of \$1,050.00 as a security deposit.

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: March 07, 2017

Residential Tenancy Branch