



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 pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for landlord's own use pursuant to section 55, and authorization to recover the filing fee for this application, pursuant to section 72.

While the landlords attended the hearing by way of conference call, the tenant did not. I waited until 9:42 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords gave sworn testimony that on February 24, 2017 a copy of the Application for Dispute Resolution hearing package was posted on the window of the tenant's residence. In accordance with sections 89 and 90 of the *Act*, the tenant is deemed with the dispute resolution hearing package on February 27, 2017, three days after posting.

The landlords provided undisputed testimony that the tenant was served with the landlord's 2 Month Notice to End Tenancy For Landlord's Own Use ('2 Month Notice'), with a corrected effective date of January 31, 2017, on November 15, 2016, by personally serving the 2 Month Notice on the tenant. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 2 Month Notice on November 15, 2016.

Issues to be Decided

Are the landlords entitled to an Order of Possession for their own use?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlords provided sworn, undisputed testimony that this month to month tenancy began approximately six years ago. Rent is currently \$600.00 per month, due on the first of each month. The landlords currently hold a security deposit in the amount of \$300.00, and the tenant continues to reside in the rental unit.

The landlords personally served the tenant a 2 Month Notice on November 15, 2016, indicating on the notice that “the rental unit will be occupied by the landlord or landlord’s close family member”. The landlord testified that the rental unit was in the basement of their home, and that their adult son intended to move there with his girlfriend.

The landlords testified that since serving the notice upon the tenant, the tenant has been extremely threatening and violent towards them and their family. The landlords testified that a friend was assaulted with a brick by the tenant in February of 2017, which he required stitches for.

Analysis

I find that the landlords’ 2 Month Notice complies with section 52 of the *Act*. Section 49 of the *Act* provides that upon receipt of a 2 Month Notice the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file his application for dispute resolution within the fifteen days of service granted under section 49(8) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(9) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 2 Month Notice, January 31, 2017. In this case, this required the tenants and anyone on the premises to vacate the premises by January 31, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee. The landlords continue to hold the tenant’s security deposit of \$300.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenant’s security deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. 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.

As the landlords were successful in their application, I find that they are entitled to recover the filing fee for this application from the tenant. I allow the landlords to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim for recovery of the filing fee for this application.

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 17, 2017

Residential Tenancy Branch