



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPR

Introduction

This was the landlords' 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 dated and served on January 22, 2017 and with an effective date of March 31, 2017 (the "2 Month Notice").

The landlords subsequently served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 3, 2017 (the "10 Day Notice") and amended their application to include a request for an order of possession based on the 10 Day Notice.

Both of the landlords attended the hearing and gave affirmed testimony. As the tenant did not attend, service of the landlords' original application and notice of hearing was considered. The landlords testified that they served the tenant with these materials on March 9, 2017 by posting them on the door of the rental unit. They further testified that they served the tenant with the amended application on March 23, 2017 in the same way. I find that the tenant was served with the application and notice of hearing on March 12, 2017, three days after these materials were posted on his door as per s. 90 of the Act. I also find that he was served with the amendment to the application on March 26, 2017 – again, three days after it was posted on his door.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Background and Evidence

A copy of the written tenancy agreement was in evidence. This tenancy began on October 1, 2016 with a monthly rent of \$1,200.00 due on the first of each month. A security deposit of \$600.00 was paid and remains in the possession of the landlords.

The landlords testified that they personally served the 2 Month Notice on the tenant on January 22, 2017. The tenant has not filed an application to dispute the 2 Month Notice. The landlords also advised that they agreed that the tenant would not pay March rent in satisfaction of their obligation to compensate the tenant in the amount of one month's rent when ending a tenancy on a 2 Month Notice to End Tenancy for Landlord's Use (as per s. 51 of the Act). However, the tenant has not paid rent for April and remains in the rental unit.

The landlords further testified that they served the 10 Day Notice, for unpaid utilities, by posting it on the rental unit door on March 5, 2017. The tenant has not filed an application to dispute the 10 Day Notice or paid the utilities claimed.

Analysis

Section 49(6) 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(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 landlords' 2 Month Notice complies with s. 52.

As set out above, the tenant has been served with the 2 Month Notice and has not applied to dispute it. The 2 Month Notice has an effective date of March 31, 2017. Accordingly, the tenant is conclusively presumed under the Act to have accepted that the tenancy ended on March 31, 2017. The tenant and anyone on the premises were required to vacate the premises by that date. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession.

As the landlords are granted an order of possession on the basis of the 2 Month Notice, I do not need to consider the 10 Day Notice.

Conclusion

The landlord's application is allowed.

I grant an order of possession to the landlords effective two (2) days from the date of service.

This order must be served 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.

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: April 07, 2017

Residential Tenancy Branch