



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This was the landlord's 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 February 1, 2017 (the "2 Month Notice") pursuant to s. 49 of the Act.

The landlord attended the hearing with his daughter, who provided the majority of the affirmed testimony and translated for her father, whose testimony was also affirmed. The landlord had the opportunity to present evidence orally and in written and documentary form and to make submissions.

As the tenant did not attend the hearing, service of the application and notice of hearing was considered. The landlord testified that he served the tenant personally with these materials on April 13, 2017, and I accept that the tenant was served in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the 2 Month Notice?

Background and Evidence

There was no written tenancy agreement in evidence, but the landlord advised that this tenancy began in or about 2006 or 2007. Monthly rent is currently \$810.00 and is due on the first of the month. A security deposit of \$300.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

The landlord testified that he served the tenant with the 2 Month Notice by posting it on her door on February 1, 2017. He attended the following day and served her personally, as he wanted to be certain that she had received it. The landlord indicated on the 2 Month Notice that it was effective on April 1, 2017.

The tenant has not applied to dispute the 2 Month Notice. The landlord also advised that she has not paid rent for April or May.

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 2 Month Notice complies with s. 52.

As set out above, the tenant was served with the 2 Month Notice on February 2, 2017 and did not apply to dispute it. Accordingly, the tenant is conclusively presumed to have accepted that the tenancy ended on April 31, 2017 the corrected effective date of the notice. The tenant and anyone on the premises were required to vacate the premises by that date. As this has not occurred, and as the tenant has not paid rent for two months, I find that the landlord is entitled to a two (2) day order of possession.

Conclusion

The landlord's application is allowed. I grant an order of possession to the landlord effective two (2) days from the date of service.

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 landlord's application is successful, I grant the landlord the cost of the filing fee in the amount of \$100.00 pursuant to s. 72(1) of the Act and authorize the landlord to retain \$100.00 from the security deposit in full satisfaction of the landlord's recovery of the \$100.00 filing fee.

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: May 17, 2017

Residential Tenancy Branch