



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA GROUP OF SOCIETIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 28, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 19, 2017 (the "Two Month Notice"); and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by M.F. and J.L., agents. The Tenants attended the hearing on their own behalves and were assisted by P.E. All parties giving testimony provided a solemn affirmation.

On behalf of the Landlord, M.F. testified that the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and the documents upon which the Landlord intended to rely, were served on the Tenant by registered mail on March 3, 2017. According to M.F., tracking information confirmed the package was received by the Tenants. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to have been received five days later. I find the Application package is deemed to have been received by the Tenants on March 8, 2017.

The Tenants submitted documentary evidence in response to the Landlord's Application. These documents were received at the Residential Tenancy Branch on June 1, 2017, five days before the hearing, contrary to Rule of Procedure 3.15. However, I find there is no prejudice to the Landlord in considering them. Further, the documentary evidence submitted by the Tenants would not impact the outcome.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties. It confirms the tenancy began on December 1, 2012. The rent is currently \$411.00 per month and is due on the first day of the month. The Tenants paid a security deposit of \$288.00, which the Landlord holds.

During the hearing, M.F. and J.L confirmed that the rate of subsidized rent is based on household income and the number of occupants in the rental unit. Each year, the Landlord and tenants undergo a rent review process, during which the amount of rent due is determined. According to M.F. and J.L., the Tenants were first provided with the rent review package on August 1, 2016. The requested information was to be provided by September 15, 2016. Although the Landlord tried to work with the Tenants, the information has not been received. M.F. and J.L. confirmed the Landlord has 107 clients requiring subsidy and that all but these Tenants have completed this process. Accordingly, on January 19, 2017, the Landlord issued the Two Month Notice, which was served on the Tenants by registered mail. The effective date of the Two Month Notice was March 31, 2017. The Landlord's documentary evidence included copies of the cover letter sent with the Two Month Notice, the Two Month Notice, and a Proof of Service form.

In reply, the Tenants testified that they wish for the tenancy to continue. They submitted that the Two Month Notice was rescinded by J.L., who was quick to point out that it would have been rescinded *if* the Tenants had provided the requested information. The Tenants also testified that they provided the information in previous years but the amount and complexity of information required in 2016 was greater. V.S. also advised that R.S. is a stay-at-home father, and testified to some challenges their children have experienced. They did not dispute having received the Two Month Notice as claimed by the Landlord.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 49 of the *Act* permits a landlord to issue a notice to end tenancy for the reasons listed therein. In this case, the Landlord wishes to end the tenancy on the basis that the Tenants no longer qualify for the subsidized rental unit; more specifically, that the Tenants have not provided the information required to determine the amount of the rent subsidy to which they may (or may not) be entitled. A tenant has 15 days after receipt of a notice to end tenancy for landlord's use of property to dispute it. Failure to do so results in the conclusive presumption the tenant has accepted the end of the tenancy.

On behalf of the Landlord, M.F. confirmed the Two Month Notice was served on the Tenants by registered mail on January 19, 2017. The Landlord submitted documentary evidence in support, and the Tenants did not dispute having received it. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenants are deemed to have received the Two Month Notice on January 24, 2017. Accordingly, the Tenants had 15 days after receipt – until February 8, 2017 – to dispute the Two Month Notice. They did not. Accordingly, pursuant to section 49(9) of the *Act*, the Tenants are conclusively presumed to have accepted the end of the tenancy.

In light of the above, and pursuant to sections 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants.

Having been successful, I also find the Landlord is entitled to recover the filing fee of \$100.00, which I order may be deducted from the security deposit held by the Landlord.

Conclusion

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 6, 2017

Residential Tenancy Branch