



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, dated May 24, 2017 (the "Application"). The Landlord sought the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession;
- an order granting recovery of the filing fee.

The parties attended the hearing on their own behalves and provided affirmed testimony.

The Landlord testified the Application package, which included the Notice of a Dispute Resolution Hearing, was served on the Tenant, in person, on May 31, 2017. The Tenant acknowledged receipt on that date. I find the Tenant received the Landlord's Application package on May 31, 2017. The Tenant submitted three pages of written submissions in response to the Landlord's Application.

The parties were given the 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.

Preliminary and Procedural Matters

Neither the Landlord nor the Tenant submitted a copy of the notice to end tenancy at issue in this Application into evidence. Accordingly, both parties were ordered to submit a copy to me by fax before 12:00 noon on July 17, 2017. The Landlord submitted a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 8, 2017 (the "Two Month Notice") at or about 9:31 a.m. on July 17, 2017.

Issues to be Decided

1. Is the Landlord entitled to an order of possession based on the Two Month Notice?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified he served the Tenant with the Two Month Notice, in person, on January 8, 2017. The stated effective date was March 30, 2017. The Tenant acknowledged receipt of the Two Month Notice on January 8, 2017, and testified she did not file an application to dispute the Two Month Notice. The Tenant continues to occupy the rental unit.

Analysis

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

Section 49(8) of the *Act* stipulates that a tenant who wishes to dispute a notice to end tenancy for landlord's use of property must, within 15 days after receipt, file an application for dispute resolution. Section 49(9) of the *Act* confirms that failure to do so results in the conclusive presumption the tenancy ends on the effective date of the notice.

In this case, the parties confirmed, and I find, that the Tenant received the Two Month Notice on January 8, 2017. She had until January 23, 2017, to dispute it by filing an application for dispute resolution. She did not. Accordingly, pursuant to section 49(9) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on March 31, 2017, which is the corrected effective date of the Two Month Notice, pursuant to section 53 of the *Act*. However, the Tenant continues to occupy the rental unit.

Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. Having been successful, I also grant the Landlord a monetary order in the amount of \$100.000 as recovery of the filing fee paid to make the Application.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$100.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: July 17, 2017

Residential Tenancy Branch