



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord's use of the rental unit pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed sworn testimony that they personally served the tenant with the Landlord's Application for Dispute Resolution (the Application), along with all supporting evidence, on September 12, 2017. In accordance with sections 88 and 89 of the Act, I find the tenant was duly served with the landlord's Application and supporting evidence.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) was personally served to the tenant at 7:00 p.m. on June 30, 2017. In accordance with section 88 of the Act, I find the Two Month Notice was duly served to the tenant.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit and has indicated to the landlord that they do not intend on vacating the rental unit.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of the rental unit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed sworn testimony that this tenancy began on June 01, 2014, with a monthly rent of \$550.00, due on the first day of each month. The landlord testified he continues to retain a security deposit of \$250.00 in trust.

A copy of the signed Two Month Notice, dated June 30, 2017, with an effective date of August 31, 2017, was included in the landlord's evidence.

Analysis

Section 49(6) of the *Act* establishes that a landlord may issue a Two Month Notice when the landlord has all necessary permits and approvals required by law to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 49(9) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 15 Days after the date the tenant receives the notice, 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.

Based on the landlord's undisputed evidence and sworn testimony, I find the tenant did not make an application pursuant to section 49(8) of the *Act* within 15 days of receiving the Two Month Notice. In accordance with section 49(9) of the *Act*, the failure of the tenant to take this action within 15 days led to the end of this tenancy on August 31, 2017, the effective date on the Two Month Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by August 31, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Therefore, as the landlord has been successful in this application, I allow him to recover the filing fee from the tenant.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to section 72 of the *Act*, I allow the landlord to retain \$100.00 for the filing fee from the existing security deposit, which is now reduced to \$150.00.

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: October 04, 2017

Residential Tenancy Branch