



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord G.S. under the *Residential Tenancy Act* (the “Act”), for an Order of Possession and the recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlords, who provided affirmed testimony. The Tenant did not attend. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Landlords testified that the Application and the Notice of Hearing were personally served on the Tenant on September 15, 2017. As a result, I find that the Tenant was personally served these documents on September 15, 2017.

At the request of the Landlords, copies of the decision and any resulting orders will be e-mailed to them at the address provided in the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing I advised the parties that P.S. was listed as the landlord in the tenancy agreement and that the Applicant, G.S. was not. P.S. testified that they own the property with G.S., who is their spouse, and that G.S. is also a landlord for the property.

Based on the above and in the absence of evidence to the contrary, I find that P.S. and G.S. both meet the definition of a Landlord pursuant to section 1 of the *Act*. As a result, I have referred to them collectively as the “Landlords” in this decision.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Landlords entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month to month tenancy began on April 30, 2017, and that rent in the amount of \$950.00 is due on the last day of each month.

The Landlords testified that they served the Tenant a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) pursuant to section 49 of the *Act*, and that although the Tenant did not dispute the Two Month Notice, they have not moved out. Further to this the Landlords testified that the Tenant has only paid \$750.00 of the \$950.00 rent owing for use and occupancy of the rental unit for November.

The Two Month Notice in the documentary evidence before me indicates that it was signed by the Landlord G.S. on October 28, 2017, and that it was personally served on the Tenant on August 29, 2017. The Landlords testified that the date of October 28, 2017, is an error and should read August 28, 2017, as that is the date the Two Month Notice was signed by the Landlord G.S. The Landlords also submitted a signed Proof of Service Notice to End Tenancy (the “Proof of Service”) indicating that the Two Month Notice was personally served on the Tenant on August 29, 2017.

Analysis

Section 49 of the *Act* states the following with regards to a Two Month Notice:

Landlord's notice: landlord's use of property

49(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the Two Month Notice on August 29, 2017, the day it was personally served on them.

As there is no evidence before me to the contrary, I find that the Tenant did not dispute the Two Month Notice within the 15 day period provided for under the *Act*. As a result, I find that the Tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the Two Month Notice, October 29, 2017, and the Landlords are therefore entitled to an Order of Possession.

Section 72 of the *Act* states the following with regards to fee's and monetary orders:

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

Pursuant to section 72 of the *Act*, I also find that the Landlords are entitled to a Monetary Order in the amount of \$100.00 for recovery of the filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order

may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 16, 2017

Residential Tenancy Branch