



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPL FF CNL CNR PSF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for landlord's use of property pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the respective applications.

Issues

Is the landlord entitled to an order of possession or should the 10 Day Notice and/or 2 Month Notice be cancelled?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy began on April 1, 2017 with a monthly rent of \$800.00 payable on the 1st day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on October 19, 2017 the tenant was personally served with the 2 Month Notice. A witnessed Proof of Service form of the 2 Month Notice was provided on file.

The tenant's application to dispute the 10 Day Notice was filed on November 9, 2017. On November 17, 2017 the tenant amended her application to dispute the 2 Month Notice.

The tenant initially acknowledged receipt of the 2 Month Notice on October 19, 2017. The tenant later argued the 2 Month Notice was not served to her personally but rather it was served on her husband. The tenant confirmed her husband resides with her. The tenant further argued that the application to dispute the 2 Month Notice was not filed within timeline permitted under the Act as she believed the tenancy was re-instated as the landlord continued to accept rent payments.

Analysis

I am satisfied that the tenant was personally served with the 2 Month Notice on October 19, 2017 pursuant to section 88 of the Act. Section 88 of the Act permits a Notice to End Tenancy to be served by leaving a copy at the person's residence with an adult who resides with the person. The tenant acknowledged her husband resides with her.

I find the 2 Month Notice complies with the form and content requirements of section 52 of the Act.

Pursuant to section 49 of the *Act*, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. The tenant was served with the 2 Month Notice on October 19, 2017 and as such the tenant's application to dispute this Notice should have been made on or before November 3, 2017. The tenant's original application was not filed until November 9, 2017 and the amendment to dispute the 2 Month Notice was not filed until November 17, 2017. If, as in the present case, the tenant does not make an application for dispute within fifteen days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, December 31, 2017.

I dismiss the tenant's argument that she filed the application to dispute the 2 Month Notice outside of the 15 day time limit as she believed the tenancy was re-instated as the landlord continued to collect rent. Even if the landlord did collect rent for November 2017, the tenant was still required to pay rent for this month under the Act, as the

effective date for the end of tenancy pursuant to the 2 Month Notice was not until December 31, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed 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: January 23, 2018

Residential Tenancy Branch