



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with the landlord's application for an Order of Possession based on a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the Two Month Notice) pursuant to sections 49 and 55 of the *Residential Tenancy Act* (the *Act*).

The tenant did not attend this hearing, although I waited until 1:12 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:00 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.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord gave undisputed affirmed testimony that they served the tenant with the Application for Dispute Resolution (the Application), along with all supporting evidence by way of registered mail on January 16, 2018. The landlord provided the Canada Post tracking number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find the tenant was deemed served with the Application and supporting evidence on January 21, 2018.

The landlord gave undisputed affirmed testimony that the Two Month Notice was personally served to the tenant on October 23, 2017. In accordance with section 88 of the *Act*, I find the Two Month Notice was duly served to the tenant.

Issues(s) to be Decided

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

Background and Evidence

The landlord gave written evidence that this tenancy began on August 01, 2016, with an economic monthly rent of \$899.00, due on the first day of each month. The landlord testified he continues to retain a security deposit in the amount of \$310.00.

A copy of the signed Two Month Notice, dated October 23, 2017, with an effective date of December 31, 2017, was included in the landlord's evidence. The Two Month Notice indicated the tenant had 15 days to file an Application for Dispute Resolution seeking to cancel the Two Month Notice.

The landlord testified that the tenant is still in the rental unit.

Analysis

Section 49.1 of the *Act* establishes that a landlord, for or on behalf of a public housing body, may issue a Two Month Notice when the tenant does not qualify for a subsidized rental unit.

Section 49.1 (6) 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 49.1(5) of the *Act* within 15 days of receiving the Two Month Notice. In accordance with section 49.1 (6) of the *Act*, due to the failure of the tenant to take this action within 15 days, I find the tenant is conclusively presumed to have accepted the end of this tenancy by December 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 December 31, 2017.

As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

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.

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: February 07, 2018

Residential Tenancy Branch