



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

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 property pursuant to section 49 and 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties agreed that the landlord served the tenant with the notice of dispute resolution amendment package and written evidence package in person on February 16, 2018. I find that the tenant was served with this package on February 16, 2018 in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of possession for landlord's use of property pursuant to sections 49 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2016 and is currently ongoing. Monthly rent in the amount of \$725.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on November 1, 2017. The Two Month Notice stated an effective date of December 31, 2017. The tenant has paid his rent on time and has received rent receipts from the landlord. All receipts provided by the landlord to the tenant from January 1, 2018 to present have been "for use and of [sic] occupancy only".

The landlord testified that his daughter is going to move into the rental unit and that is why he issued the Two Month Notice. He further testified that after the effective date on the Two Month Notice passed, he accepted rental payments for use an occupancy only but continued to request that the tenant vacate the rental property.

The tenant testified that since he received the Two Month Notice he has been looking for a new place to live but has been unable to find anything available at his price point. He further testified that since his rent has continued to be accepted he thought he was allowed to stay at the rental property until he found another place to stay. The tenant testified that he did not think that the landlord's daughter was going to move in but provided no further evidence to support this assertion.

Analysis

Section 49(3) of the *Act* states that a landlord may end a tenancy if the landlord or close family member of the landlord intends in good faith to occupy the rental unit.

Based on the documentary evidence and testimony, I find that the tenant was personally served with the Two Month Notice, issued in accordance with section 49(3) of the *Act*, on November 1, 2017. Section 49(2) states that the notice to end tenancy must be not earlier than 2 months after the date the tenant receives the notice and must be the day before the day in the month that rent is payable under the tenancy agreement. In this case, the landlord provided the tenant with the Two Month Notice on the date that rent was due rather than the day before so the calculation of 2 months does not include the month of November 2017. Section 53(2) states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable

section, the effective date is deemed to be the earliest date that complies with the section. Pursuant to section 53(2) I find that the corrected effective date on the Two Month Notice is January 31, 2018.

Pursuant to section 49(8) of the *Act*, the tenant had 15 days after receiving the notice to dispute it. If the tenant fails to file an application to dispute the notice to end tenancy, the legislation contains a conclusive presumption that the tenant has accepted the end of the tenancy on the effective day of the Notice. I find that as the tenant did not file an application to dispute the notice he has conclusively been presumed to have accepted the end of the tenancy on the corrected effected date of January 31, 2018.

Conclusion

Pursuant to section 55 of the *Act*, I issue an Order of Possession to the landlord, which is to take effect at 1:00 p.m. on April 30, 2018. 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. I request that the landlord provide a copy of this decision to the tenant when the Order of Possession is served on the tenant.

Pursuant to section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for recovery of the filing fee for this application. The landlord is 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: April 25, 2018

Residential Tenancy Branch