



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

On September 28, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing with S.D. as his agent; however, the Tenant did not make an appearance. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenant the Notice of Hearing package and evidence by registered mail on September 28, 2018 (the registered mail tracking number is on the first page of this decision). In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing package and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord was unsure of when the tenancy started but he stated that it began “maybe eight years ago”. Rent was established at \$775.40 per month and was due on the first of each month. He was also unsure of how much of a security deposit was paid but he believes it was between \$200.00 and \$300.00.

The Landlord submitted that the Notice was posted on the Tenant’s door on August 28, 2018. The reason the Landlord checked off on the Notice was because “The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).” He advised that the Landlord’s daughter will be occupying the rental unit on December 1, 2018 and a signed tenancy agreement was submitted into evidence to corroborate this testimony. The effective date of the Notice was noted as November 1, 2018.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord’s right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. Furthermore, this section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 55(1) of the *Act* states that if the Tenant has not submitted an Application for Dispute Resolution seeking to cancel the notice within the required timeframe and the Landlord's Notice complies with all the requirements of Section 52 of the *Act* and is upheld, the Landlord must be granted an Order of Possession.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on August 31, 2018. As the fifteenth day fell on Saturday September 15, 2018, the Tenant must have made her Application by Monday September 17, 2018 at the latest. However, the undisputed evidence is that the Tenant did not dispute this Notice. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

I find that the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on August 28, 2018 complies with the requirements set out in Section 52. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

However, as rent was due on the first of each month, the effective date on the Notice of November 1, 2018 is incorrect. Section 53 of the *Act* allows for any incorrect dates to self-correct. As such, I find that the Order of Possession is effective at **1:00 PM on November 30, 2018 after service of this Order** on the Tenant.

Conclusion

I grant an Order of Possession to the Landlord effective at **1:00 PM on November 30, 2018 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: November 8, 2018

Residential Tenancy Branch