



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FFL

Introduction

This hearing dealt with a landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 17, 2018 ("2 Month Notice") and to recover the cost of the filing fee.

The landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlords testified that the tenant was served with Notice of Hearing, application and documentary evidence by posting it to the tenant's door on October 11, 2018. The landlord also stated that on October 15, 2018 the landlord received two threatening texts from the tenant in response to the documents posted on the tenant's door on October 11, 2018. Based on the undisputed evidence before me and without any evidence to prove to the contrary, I find the tenant was deemed served three days after October 11, 2018 which would be October 14, 2018 in accordance with section 90 of the *Act*. Section 90 of the *Act* states that documents posted to the door are deemed served three days after they are posted.

As the tenant failed to attend the hearing, I find that this matter is undisputed by the tenant as a result.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord stated that the tenant's surname was missing a "u" in it and as a result, I amend the landlords' application to include the correct spelling of the tenant's surname as an "AKA" which stands for "also known as". The amendment was made in accordance with section 64(3) of the *Act*.

In addition to the above, the landlords confirmed their email address during the hearing and were advised that the decision and any related orders would be sent by email to the landlords and by regular mail to the tenant as the landlords were not aware of the email address for the tenant.

Issues to be Decided

- Are the landlords entitled to an order of possession based on an undisputed 2 Month Notice under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlords testified that a written tenancy agreement exists between the parties and that the tenancy began between 2.5 and 3 years ago. The landlords testified that monthly rent is \$850.00 per month and is due on the first day of each month and has never been increased during the tenancy.

The landlords provided a copy of the 2 Month Notice in evidence. The landlords stated that the tenant was served with the 2 Month Notice on September 17, 2018 by posting to the tenant's door and that the 2 Month Notice was dated the same day. The effective vacancy date listed on the 2 Month Notice is November 17, 2018 which would automatically correct to November 30, 2018 at 1:00 p.m. under section 53 of the *Act*.

The landlords are seeking an order of possession of the rental unit as the tenant continues to occupy the rental unit.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the landlords' undisputed testimony that the tenant was served with the 2 Month Notice by posting to the tenant's door on September 17, 2018. In accordance with section 90 of the *Act* I deem the tenant served three days later on September 20, 2018. There is no evidence before me that the tenant filed an application to dispute the 2 Month Notice. Therefore, I accept the landlords' testimony that the tenant continues to occupy the rental unit and did not dispute the 2 Month Notice. Pursuant to section 49 of the *Act*, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective vacancy date of the 2 Month Notice, which in the matter before me corrects under section 53 of the *Act* from November 17, 2018 to November 30, 2018 at 1:00 p.m. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[My emphasis added]

Based on the above and taking into account that the tenant continues to occupy the rental unit and that I find the 2 Month Notice complies with section 52 of the *Act*, I grant the landlord an order of possession **effective November 30, 2018 at 1:00 p.m.**

I find the tenancy ends on that date, November 30, 2018 at 1:00 p.m.

As the landlords' application was successful, I grant the landlords **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee under the *Act*. As the landlords continue to hold a security deposit of \$425.00 as stated during the hearing, I authorize the landlords to retain **\$100.00** of that security deposit pursuant to section 38 of the *Act* in full satisfaction of the recovery of the cost of the filing fee. I find the tenant's new security deposit balance is now \$325.00 as a result which continues to be held by the landlords.

Conclusion

The landlords' application is fully successful.

The tenancy ends on November 30, 2018 at 1:00 p.m.

The landlords have been granted an order of possession effective November 30, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I have authorized the landlords to retain \$100.00 of the security deposit pursuant to section 38 of the *Act* in full satisfaction of the recovery of the cost of the filing fee. I find the tenant's new security deposit balance is now \$325.00 as a result which continues to be held by the landlords.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 20, 2018

Residential Tenancy Branch