



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “*Act*”) to enforce a Two Month Notice to End Tenancy for Landlord’s Use of the Property: tenant ceases to qualify for rental unit (the “Notice”) issued on October 16, 2018. The matter was set for a conference call.

The Property Manager, Property Manager Assistant, and the Affordable Housing Supervisor (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were served to the Tenant by Canada Post Registered mail, sent on November 23, 2018, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision

Issue to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 49.1 of the *Act*?

Background and Evidence

The Landlord testified that they personally served the Notice to the Tenant on October 16, 2018. The Notice indicated an end of tenancy date of December 31, 2018.

The Landlord testified that the Tenant had not served the Landlord with an application to show they had disputed the Notice.

The Landlord testified that the Tenant had not moved out in accordance with the Notice and that she is seeking an order of possession.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities:

Section 49.1 of the *Act* requires that upon receipt of a Notice to End Tenancy for Landlord Use of the Property a tenant must, within 15 days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 49(9) of the *Act*.

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2) Subject to section 50 [*tenant may end tenancy early*] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

- (a) not earlier than 2 months after the date the notice is received,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

I find that the Tenant had personally received the Notice to end the tenancy on October 16, 2018. Pursuant to section 49.1(5) the *Act*, the Tenant had 15 days to dispute the Notice. Consequently, I find that the Tenant had until October 31, 2018, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired.

Therefore, pursuant to section 49.1(6) I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

Section 55(2b) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 2 days after service of this Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. 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 8, 2019

Residential Tenancy Branch