



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL-S OPL

Introduction

This teleconference hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for:

- An order of possession pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The landlords appeared and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and call witnesses. The landlord RS (the "landlord") primarily spoke on behalf of the co-landlords.

The landlord testified that they served a 2 Month Notice to End Tenancy for Landlord's Use dated October 9, 2018 on that same date by registered mail. The landlord provided a Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served with the 2 Month Notice on October 14, 2018, five days after mailing, in accordance with sections 88 and 90 of the *Act*.

The landlord testified that they served the application for dispute resolution dated January 14, 2019 and evidentiary materials on the tenant by registered mail send on January 18, 2019. The landlord submitted a copy of the Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served with the landlord's package on January 23, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This tenancy began approximately 4 years ago. The current monthly rent is \$400.00 payable on the first of each month. No security deposit was collected at the start of the tenancy.

The landlord issued a 2 Month Notice dated October 9, 2018 providing an end of tenancy date of December 31, 2018. The reason provided on the 2 Month Notice for the tenancy to end is that the landlord or the landlord's close family member intends to occupy the rental unit. The landlord testified that they have purchased adjoining properties and intend to occupy the rental property while construction is being performed.

The landlord said that as of the date of the hearing the tenant has not paid rent for December 2018 nor for January and February 2019.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the evidence before me that the tenant failed to dispute the 2 Month Notice within the 15 days of the date of deemed service on October 14, 2018, granted under section 49(8) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ends on the effective date of the 2 Month Notice, December 31, 2018.

I find that the landlord's 2 Month Notice conforms with the form and content requirements of the *Act* as it provides the correct rental address, the effective date and the reason for the tenancy to end. I accept the landlord's evidence that they intend to personally occupy the rental property while they perform work on adjoining properties. Therefore, I find that the landlords are entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 2 Month Notice has passed I issue an Order of Possession effective 2 days after service.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

In accordance with section 51(1) of the *Act*, a tenant who receives a notice to end tenancy for landlord's use is entitled to compensation in the amount of 1 month's rent, which they may

withhold payment to satisfy. Accordingly, I find that the tenant was entitled to withhold rent for December, 2018 and the rent for that month is not payable to the landlord.

Section 57 of the Act allows a landlord to claim compensation from a tenant for the period that the tenant overholds a rental property. I accept the landlord's evidence that the tenant has remained in the rental property and has failed to make any payment of rent for January and February, 2019. The landlord seeks the equivalent of one and a half month's rent in the amount of \$600.00. I find that the amount is reasonable and issue a monetary award in that amount in the landlord's favour accordingly.

As the landlord's application was successful the landlords are also entitled to recover the filing fee.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant 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.

I issue a monetary order in the landlords' favour in the amount of \$700, which allows the landlords to recover unpaid rent and the filing fee for this application.

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: February 12, 2019

Residential Tenancy Branch