



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 732 MOODY PARK RENTALS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL OPL-4M**

Introduction

This hearing dealt with an application by the landlord under the Residential Tenancy Act (the *Act*) for the following:

- An order for possession pursuant to section 49 and 55; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. MD, lawyer, and DC, agent represented the landlord at the hearing (“the landlord”). Advocate JD represented the tenant. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The landlord testified the landlord served the tenant with the Application for Dispute Resolution and supporting documents pursuant to section 89 of the *Act* by registered mail on February 15, 2019. The landlord provided the Canada Post tracking number for the registered mail referenced on the first page of this decision. Pursuant to sections 89 and 90, I find the landlord served the tenant on February 20, 2019, the 5th day after mailing.

At the outset of the hearing, the landlord withdrew his request for reimbursement of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord testified that the parties entered into a signed residential tenancy agreement for a month-to-month tenancy commencing April 1, 2013 for rent of \$755.00 a month payable on the first of the month.

The landlord testified the tenant paid a security deposit of \$347.50 at the start of the tenancy which the landlord holds. The tenant has not provided any written authorization to the landlord to retain the deposit.

The landlord issued a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit pursuant to section 49(6) ("the Four Month Notice") which the landlord testified he served upon the tenant by posting to the tenant's door on December 27, 2018, thereby affecting service under section 90 on December 30, 2018, with an effective move-out date of April 30, 2019.

The landlord testified the Four Month Notice was in the RTB standard form and complied with the provisions of section 52. The notice stated that the tenant may dispute the notice within 30 days of receiving it, by filing an Application for Dispute Resolution. The tenant has not filed an application to dispute the notice.

The tenant continues to reside in the rental unit. The landlord requested an order of possession effective April 30, 2019.

Analysis

I have reviewed all the landlord's uncontracted documentary evidence and testimony.

The landlord has issued a Four Month Notice. I accept the testimony of the landlord that the form complies with section 52 and so find. I find the landlord served the notice on the tenant on December 30, 2018 in compliance with sections 88 and 90. I find the effective date of the notice is April 30, 2018. I find the notice requires the tenant to

vacate the unit on or before April 30, 2019. I find the tenant did not dispute the notice within the time allowed by the *Act*.

Section 49(6) provides that if the tenant does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The section states:

(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.

Further to section 49(6), I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The landlord requested an order of possession in advance of the effective date of the notice.

Section 55 (2) and (3) of the *Act* states that the Director may issue an order of possession before the date when a tenant is required to vacate a rental unit and the order takes effect on the date specified in the order. The relevant portions of the *Act* states as follows:

(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:
(a) a notice to end the tenancy has been given by the tenant;
(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;
...
(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Pursuant to section 55 (2) and (3), I grant the landlord an order of possession with respect to the unit effective at 1:00 PM on April 30, 2019.

Conclusion

I grant the landlord an order of possession effective at 1:00 PM on April 30, 2019. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: March 15, 2019

Residential Tenancy Branch