



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, FF

Introduction

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

- an order of possession for landlord's use pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was personally served with the notice of hearing package on January 28, 2019. The landlord stated that the tenant currently still resides in the rental unit. I accept the undisputed affirmed testimony of the landlord and find that the tenant was served in person on January 28, 2019 with the notice of hearing package and the submitted documentary evidence. As such, I find that although the tenant did not attend, the tenant is deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that there is no signed tenancy agreement, but that monthly rent is \$500.00 payable on the 1st day of each month.

The landlord seeks an order of possession as a result of a 2 month notice for landlord's use of property, a clarified monetary claim of \$2,000.00 for unpaid rent and recovery of the \$100.00 filing fee.

The landlord claims that the tenant was served with the 2 month notice dated October 31, 2018 in person on October 31, 2018. The 2 month notice sets out that the effective end of tenancy is December 31, 2018 and that the reason on the notice is:

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).

The landlord also provided undisputed affirmed testimony that the tenant has not served him with an application for dispute of the 2 month notice nor has the tenant paid any rent for November 2018, December 2018, January 2019 and February 2019 for unpaid rent of \$2,000.00 @ \$500.00 per month.

Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. Subsection 49(9) states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

In this case, I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the 2 month notice dated October 31, 2018 in person. The landlord provided undisputed testimony that the tenant has not filed an application for dispute nor has he been served with one. As such, pursuant to section 49(8) the tenant is conclusively presumed to have accepted that the tenancy ended on December 31, 2018. The landlord is granted an order of possession to be effective 2 days after upon being served.

As for the monetary claim, I find based upon the undisputed affirmed testimony of the landlord that monthly rent of \$500.00 has not been paid by the tenant for the 4 month period from November 2018 to February 2019 as claimed.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$2,100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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 11, 2019

Residential Tenancy Branch