



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPQ

Introduction

This hearing was convened by way of conference call. The Landlord had filed an Application for Dispute Resolution on May 28, 2019 (the "Application"). The Landlord applied for an Order of Possession based on a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated April 23, 2019 (the "Notice"). The Landlord also sought reimbursement for the filing fee.

Y.B. and R.M. (the "Agents") appeared at the hearing for the Landlord. The Tenant did not appear for the hearing. I explained the hearing process to the Agents who did not have questions when asked. The Agents provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

R.M. testified that he sent the hearing package and evidence to the rental unit by registered mail on June 10, 2019. He provided Tracking Number 1 for this. I looked this up on the Canada Post website which shows a notice card was left June 11, 2019. The item was unclaimed and returned to the sender June 28, 2019.

Based on the undisputed testimony of R.M., and Canada Post website information, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(2)(b) of the *Residential Tenancy Act* (the "*Act*"). The Tenant is deemed to have received the hearing package and evidence pursuant to section 90 of the *Act*. I also find the hearing package and evidence were sent in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Agents. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started August 01, 2016 and is a month-to-month tenancy. Subsidized rent is \$586.00 per month due on or before the first of each month. The Tenant paid a security deposit of \$495.00. The agreement is signed on behalf of the Landlord and by the Tenant.

The Agents advised that the Landlord is seeking to keep \$100.00 of the security deposit as reimbursement for the filing fee.

The Notice is addressed to the Tenant and relates to the rental unit. It is signed and dated for the Landlord. It has an effective date of June 30, 2019. The grounds for the Notice are that the Tenant no longer qualifies for the subsidized rental unit.

The Agents testified that both pages of the Notice were served on the Tenant in person at the rental unit April 23, 2019. A Proof of Service signed by R.M. was submitted in support of this.

Y.B. was not aware of the Tenant ever disputing the Notice.

I understand from the materials submitted that the Landlord has an agreement with the British Columbia Housing Management Commission as referenced in term 9 of the tenancy agreement.

Term 5 of the tenancy agreement states that the tenancy can be terminated under section 49.1 of the RTA if the tenant ceases to qualify for the rental unit. It also states

that the rental unit is designated for a family and that the family must meet and continue to meet all the rules and conditions of BC Housing.

The Landlord submitted a screen shot from the BC Housing website outlining the eligibility requirements for a family.

Y.B. testified that she and R.M. did an inspection of the rental unit a year ago because of numerous complaints about people visiting the rental unit. She said it did not look like children were living at the rental unit. Y.B. testified that the neighbour did not think children were living at the rental unit. Y.B. said the Tenant told them her children were with her mother. Y.B. testified that the Tenant was supposed to provide information about a plan to have the children returned to her; however, the Tenant never did this. Y.B. said she sent the Tenant a letter asking for confirmation that her children are in her care or there is a plan for their return. A copy of this letter was submitted as evidence. Y.B. said the Tenant never responded to the letter.

Y.B. sought an Order of Possession effective July 31, 2019.

Analysis

The Notice was served pursuant to section 49.1 of the *Act* which states:

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) ...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.

Pursuant to sections 2 and 3.1 of the *Residential Tenancy Regulation*, a public housing body includes “any housing society...that has an agreement regarding the operation of residential property with... the British Columbia Housing Management Commission”.

Based on the materials submitted, including term 9 of the tenancy agreement, I am satisfied the Landlord is a public housing body. Based on the materials submitted, including term 5 of the tenancy agreement, I am satisfied the rental unit is a “subsidized rental unit” as that term is defined in section 49.1 of the *Act*.

Given term 5 of the tenancy agreement, I am satisfied the tenancy agreement does provide for the tenancy ending pursuant to the Notice as required by section 49.1(2) of the *Act*.

Based on the undisputed testimony of the Agents, and Proof of Service, I find the Tenant was served with the Notice on April 23, 2019 in accordance with section 88(a) of the *Act*. Given the Tenant was served in person, I find the Tenant received the Notice April 23, 2019.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 49.1(4) of the *Act*.

The Tenant had 15 days from receiving the Notice on April 23, 2019 to dispute it under section 49.1(5) of the *Act*. I accept the undisputed testimony of Y.B. that she is not aware of the Tenant disputing the Notice. I have no evidence before me that the Tenant did dispute the Notice. I am satisfied the Tenant did not dispute the Notice.

Therefore, pursuant to section 49.1(6) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended June 30, 2019, the effective date of the Notice. I note that the effective date complies with section 49.1(3) of the *Act*. The Tenant was required to vacate the rental unit by June 30, 2019.

The Landlord is entitled to an Order of Possession and I issue the Landlord an Order of Possession effective at 1:00 p.m. on July 31, 2019 pursuant to section 55 of the *Act*.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Landlord can keep \$100.00 of the security deposit.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on July 31, 2019. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

I award the Landlord \$100.00 as reimbursement for the filing fee. The Landlord can keep \$100.00 of the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 16, 2019

Residential Tenancy Branch