



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

On June 6, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenant the Notice of Hearing by registered mail on June 6, 2019 but the Tenant refused to pick up this package, so he posted it to the door on June 26, 2019. The Tenant confirmed that she received this package on her door. As the Notice of Hearing package was served in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord's Notice of Hearing package despite her avoiding service by registered mail.

The Landlord advised that he served his evidence to the Tenant on June 17, 2019 by registered mail and she confirmed that she received this. As service of this evidence complies with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

The Tenant advised that she served her evidence to the Landlord on or around July 6, 2019 by placing it in his mailbox and he confirmed that he received this on July 5, 2019. As service of this evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2015 and rent was established at \$600.00 per month, due on the first of each month. A security deposit of \$250.00 was paid.

The Landlord submitted that the Notice was posted on the Tenant's door on May 12, 2019. The reason the Landlord checked off on the Notice was because "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 effective date of the Notice was noted as July 12, 2019. He stated that the Tenant did not pay rent for July 2019.

The Tenant advised that she received this Notice on May 12, 2019, that she discussed the issue with the Landlord, and she told him that she could not move. She stated that she believed she failed to dispute this Notice on another Residential Tenancy Branch hearing. The hearing number for this other file is referenced on the first page of this decision.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. Furthermore, this section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 55(1) of the *Act* states that if the Tenant has not submitted an Application for Dispute Resolution seeking to cancel the notice within the required timeframe and the Landlord's Notice complies with all the requirements of Section 52 of the *Act* and is upheld, the Landlord must be granted an Order of Possession.

The undisputed evidence before me is that the Tenant received the Notice on or around May 12, 2019. As the fifteenth day fell on Monday May 27, 2019, the Tenant must have made her Application by this date at the latest. However, the undisputed evidence is that the Tenant did not dispute this Notice in the other Application or on a new Application. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

I find that the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on May 12, 2019 complies with the requirements set out in Section 52. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

However, as rent was due on the first of each month, the effective date on the Notice of July 12, 2019 is incorrect. Section 53 of the *Act* allows for any incorrect dates to self-correct. As such, I find that the Order of Possession is effective at **1:00 PM on July 31, 2019 after service of this Order** on the Tenant.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of the *Act*, I allow the Landlord to retain this from the security deposit.

Conclusion

I grant an Order of Possession to the Landlord effective at **1:00 PM on July 31, 2019 after service of this Order** on the Tenant. 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: July 19, 2019

Residential Tenancy Branch