



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL-4M FF

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 13, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by D.M., an advocate, and S.U., a translator. Other witnesses for the Landlord attended the hearing but did not participate. The Tenants did not attend the hearing.

The Landlord testified the Notice of Dispute Resolution Hearing package was served on the Tenants by registered mail on December 19, 2019. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find these documents are deemed to have been received on December 24, 2019. The Tenants did not submit documentary evidence in response to the Application.

The Landlord was provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord issued a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit to each Tenant. Each notice to end tenancy was dated August 31, 2019 and each differed only with respect to the name of the recipient. However, the Landlord testified that there is only one tenancy. Accordingly, I proceeded with the hearing on the basis that there is one tenancy and one notice to end tenancy applicable to the Tenants, which I refer to throughout this Decision as the Four Month Notice.

Issue to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord purchased the rental property in August 2019. The Tenants occupied the rental property at that time, but the Landlord was unable to confirm when the tenancy began. Although he testified that rent has not been paid for five months, the Landlord testified that rent in the amount of \$2,450.00 per month is due on the first day of each month. The Landlord testified the Tenants did not pay a security deposit.

The Landlord requested an order of possession based on the undisputed Four Month Notice. The Landlord testified the One Month Notice was served on the Tenants by posting copies to the front and rear doors of the rental unit on August 31, 2019. A signed Proof of Service document confirming service in this manner was submitted into evidence. On behalf of the Landlord, D.M. advised that the Landlord has checked with the Residential Tenancy Branch and that the Four Month Notice has not been disputed although the Tenants continue to occupy the rental unit.

As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49(6) of the *Act* permits a landlord to take steps to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit. The Four Month Notice confirms this is the Landlord's intention. Section 49(8) of the *Act* confirms that a tenant who receives a notice under section 49(6) of the *Act* has 30 days to dispute it by making an application for dispute resolution. Pursuant to section 49(9) of the *Act*, failure to do so results in the conclusive presumption that the tenant accepted the tenancy ends on the effective day of the notice and that the tenant must vacate the rental unit by that date.

In this case, I find the Landlord served the Tenants with the Four Month Notice by posting copies to the front and rear doors of the rental unit on August 31, 2019. Pursuant to section 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. As a result, I find the Four Month Notice is deemed to have been received by the Tenants on September 3, 2019. Therefore, despite what is indicated on the Four Month Notice, and as correctly pointed out by D.M., I find the effective date is automatically corrected to January 31, 2020, pursuant to section 53 of the *Act*.

Further, I find the Tenants did not dispute the Four Month Notice by making an application for dispute resolution within 30 days after receipt, pursuant to section 49(6) of the *Act*. Therefore, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the Four Month Notice, or January 31, 2020, pursuant to section 49(9) of the *Act*.

Considering the above, I find the Landlord has demonstrated an entitlement to an order of possession, which will be effective two days after service on the Tenants.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I grant the Landlord a monetary order in the amount of \$100.00.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenants. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$100.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 21, 2020

Residential Tenancy Branch