



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL-4M**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an order of possession for demolition, renovation, repair or conversion of rental unit pursuant to sections 49 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:48 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord HD attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she personally served the tenant with the Notice of Dispute Resolution Proceedings package on January 11, 2020 at 7:00 p.m. at the rental unit. The service was witnessed by her husband who was not called as a witness. I am satisfied the tenant was duly served on January 11, 2020 in accordance with section 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for demolition, renovation, repair or conversion of rental unit pursuant to sections 49 and 55?

Background and Evidence

The landlord provided the following undisputed testimony. The rental unit is an entire single family home. The month to month tenancy began on June 1, 2019. Rent was set at \$1,100.00 with \$650.00 being paid by government social services and the remaining \$450.00 being paid by the regional mental health association.

The landlord had successfully applied to the city for a permit to demolish the home to build a duplex on the lot. A copy of the city permit was submitted as evidence.

On November 26, 2019, the landlord served the tenant with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit ("Notice") indicating the landlord will demolish the rental unit. Witnessed proof of service of the Notice was provided as evidence.

The landlord testified that the tenant has not yet been compensated with the equivalent of one month's rent as required by section 51 of the Act.

Analysis

Section 49(2)(5)(6)(7) and (8)(b) of the Act states:

(2)(b) **Subject to section 51** *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy (b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

- i. not earlier than 4 months after the date the tenant receives the notice,
- ii. 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
- iii. if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*

(8)(b) A tenant may dispute a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

Section 51(1) states:

51 Tenant's compensation: section 49 notice

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on the landlord's testimony and the Notice before me, I find the tenant was duly served with the Notice on November 29, 2019 in accordance with section 88 of the Act. Although the tenant had the opportunity to do so, she did not file an application to dispute the Notice within 30 days or attend the scheduled Dispute Resolution Hearing. The tenant is therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit on March 31, 2020. I find that the landlord's 4 month Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55. The landlord is entitled to an Order of Possession effective at 1:00 p.m. on March 31, 2020.

The landlord testified that she has not yet compensated the tenant with the equivalent of one month's rent in accordance with sections 49(2)(b) or 51 of the Act. As section 49(2)(b) states the landlord may end a tenancy if section 51 [tenant's compensation: section 49 notice] is complied with, the landlord is statutorily required to compensate the tenant with the equivalent of one month's rent, or \$1,100.00. Pursuant to section 51 of the Act, I award the tenant a monetary order in this amount.

Conclusion

I grant an Order of Possession to the landlord effective **March 31, 2020 at 1:00 p.m.** Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the tenant's favour in the amount of **\$1,100.00** pursuant to section 51 of the Act.

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 06, 2020

Residential Tenancy Branch