



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for an Order of Possession for landlord's use of property pursuant to section 55 and recovery of the filing fee pursuant to section 72.

The tenants did not attend this hearing, which lasted approximately 10 minutes. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of hearing and all evidence by posting on the rental unit door on September 16, 2020. Based on the undisputed testimony I find the tenant is deemed served with all materials on September 19, 2020, three days after posting in accordance with sections 88(g), 89(2)(d) and 90(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began on April 18, 2020. Monthly rent is \$1,325.00 payable on the middle day of each month. A security deposit of \$662.50 was collected at the start of the tenancy and is still held by the landlord.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated July 26, 2020. The notice provides an effective date of September 25, 2020 and states the reason for the tenancy to end is that the rental unit will be occupied by the landlord or a close family member. The 2 Month Notice was personally served on the tenant on July 26, 2020. The landlord is unaware of the tenant filing an application to dispute the notice.

Analysis

I accept the undisputed evidence of the landlord that the tenant was served with the 2 Month Notice on July 26, 2020 in accordance with section 88(a) of the *Act*.

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Accordingly, the tenant had 15 days from July 26, 2020 to file an application for dispute. I accept the undisputed evidence of the landlord that the tenant did not file any application disputing the 2 Month Notice.

I note that the effective date identified in the Notice is earlier than the date before the day in the month when rent is payable under the tenancy agreement. Pursuant to section 53 of the *Act*, which provides that incorrect effective dates are automatically changed, I deem the effective date of the Notice to be October 14, 2020, the date not earlier than 2 months after the date the tenant received the notice and the date before the day in the month when rent is payable.

I find that the tenant has failed to file an application for dispute resolution within the 15 days of service granted under section 49(8) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ends on the corrected effective date of the 2 Month Notice, October 14, 2020.

The landlord's 2 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form, is signed and dated by the landlord, clearly identifies the parties, the address of the rental unit and provides the reason for the tenancy to end. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, as the effective date has passed I issue an Order of Possession enforceable 2 days after service.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant 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.

The security deposit for this tenancy is reduced by \$100.00 from \$662.50 to \$562.50.

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: October 26, 2020

Residential Tenancy Branch