



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, 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;
- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover their filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord appeared with the assistance of a family member and 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 their application for dispute resolution dated November 1, 2020 on the tenant by registered mail sent on November 6, 2020. The landlord provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the application and evidentiary materials on November 11, 2020, five days after mailing in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began in February 2011. Monthly rent is \$1,600.00 payable on the first of each month. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord issued a 2 Month Notice dated August 15, 2020 providing an end of tenancy date of October 31, 2020. A copy of the 2 Month Notice was submitted into documentary evidence. The reason provided for the tenancy to end is that the landlord or a close family member will occupy the rental unit. The landlord testified that they intend to move into the rental unit from a different residence in the same municipality.

The landlord gave evidence that the 2 Month Notice was served on the tenant by posting on the rental unit door on August 15, 2020. The landlord is not aware of the tenant filing any application to dispute the notice. The landlord testified that any payments made by the tenant have been confirmed to be for use and occupancy only and did not reinstate the tenancy.

The landlord seeks a monetary award as they believe the rental unit and property may have been damaged by the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the evidence before me that the landlord served their 2 Month Notice by posting on the rental unit door on August 15, 2020. I find that the tenant is deemed served with the notice on August 18, 2020, three days after posting, in accordance with sections 88 and 90 of the *Act*.

I accept the evidence that the tenant failed to dispute the 2 Month Notice within the 15 days of the date of deemed service on August 18, 2020, 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 effective date of the 2 Month Notice, October 31, 2020.

I find that the landlord's 2 Month Notice conforms with the form and content requirements of the Act as it provides the correct rental address, the effective date and the reason for the tenancy to end. I accept the landlord's evidence that they intend to occupy the rental suite. Therefore, I find that the landlord is entitled to an Order of

Possession. As the effective date of the notice has passed, I issue an Order of Possession effective 2 days after service on the tenant.

I find that it is premature for the landlord to seek a monetary award for damage to the rental unit as this tenancy has not yet ended. I therefore, dismiss this portion of the landlord's application with leave to reapply.

As the landlord's application was primarily successful, I find the landlord is 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 satisfaction of the monetary award issued in the landlord's favour. The security deposit for this tenancy is reduced by that amount to \$550.00.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant 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 portion of the landlord's application seeking a monetary award is dismissed with leave to reapply.

The security deposit for this tenancy is reduced by \$100.00 from \$650.00 to \$550.00.

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: January 21, 2021

Residential Tenancy Branch