



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPQ, MNRL-S

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on January 15, 2021 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a Two Month Notice to End Tenancy - Tenant Does Not Qualify for Subsidized Housing (the "Notice")
- To recover unpaid rent
- To keep the security deposit
- To recover the filing fee

The Agent for the Landlord appeared at the hearing. The Tenants did not appear at the hearing which lasted 14 minutes. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent she could not record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent confirmed the hearing packages were sent by registered mail to the rental unit on January 18, 2021. The Landlord had submitted the customer receipts for this with Tracking Numbers 1 and 2 on them. I looked Tracking Numbers 1 and 2 up on the Canada Post website which shows the packages were delivered January 20, 2021.

The Agent testified that the evidence was posted to the door of the rental unit January 29, 2021.

Based on the undisputed testimony of the Agent, customer receipts and Canada Post website information, I find the Tenants were served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I am satisfied the Tenants received the packages January 20, 2021. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service of the hearing packages.

Based on the undisputed testimony of the Agent, I find the Tenants were served with the evidence in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the evidence February 01, 2021. I find the Landlord complied with rule 3.14 of the Rules in relation to the timing of service of the evidence.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Agent testified as follows.

There is a verbal tenancy agreement between the parties. The tenancy started December 01, 2016 and is a month-to-month tenancy. Rent is \$904.00 per month due on the first day of each month. The Tenants paid a \$383.50 security deposit.

The Notice was posted to the door of the rental unit October 30, 2020. The Agent is not aware of the Tenants disputing the Notice.

The Tenants no longer qualify for the rental unit. Sections 49.1(1)(a) and (b) of the *Act* apply to the rental unit.

The Tenants currently owe \$5,823.00 in outstanding rent. The Tenants did not have authority under the *Act* to withhold any of this rent.

The Landlord is seeking an Order of Possession effective two days after service on the Tenants.

The Landlord submitted the following documentary evidence:

- The Notice. The Notice is dated October 20, 2020 with an effective date of December 31, 2020. The grounds for the Notice are that the Tenants no longer qualify for the subsidized rental unit.
- One page of a Proof of Service for the Notice
- An email about the Tenants no longer qualifying for the rental unit
- Rent ledger

Analysis

The Notice was issued pursuant to section 49.1 of the *Act* which states:

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body,
and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2) Subject to section 50 [tenant may end tenancy early] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by

giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

- (a) not earlier than 2 months after the date the notice is received,
- (b) 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
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

(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.

I accept the undisputed testimony of the Agent and based on it, as well as the documentary evidence outlined above, I find the following.

I accept that sections 49.1(1)(a) and (b) of the *Act* apply to the rental unit and this tenancy.

I accept that the Tenants have ceased to qualify for the rental unit.

I accept that the Notice was posted to the door of the rental unit October 30, 2020. I find the Tenants were served with the Notice pursuant to section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the Notice November 02, 2020.

The Tenants had 15 days from November 02, 2020 to dispute the Notice pursuant to section 49.1(5) of the *Act*. I accept that the Agent is not aware of the Tenants disputing the Notice. I have no evidence before me that the Tenants did dispute the Notice.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 49.1(4) of the *Act*.

Pursuant to section 49.1(6) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended January 31, 2021, the corrected effective date of the Notice. The Tenants were required to vacate the rental unit by January 31, 2021.

I find the Landlord is entitled to an Order of Possession and issue an Order of Possession effective two days after service on the Tenants pursuant to section 55 of the *Act*.

Section 7(1) of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept that the Tenants currently owe \$5,823.00 in outstanding rent. I accept that the Tenants did not have authority under the *Act* to withhold any of this rent. Therefore, the Landlord is entitled to recover \$5,823.00 in outstanding rent.

As the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants owe the Landlord \$5,923.00. Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$383.50 security deposit. Pursuant to section 67 of the *Act*, the Landlord is issued a Monetary Order for the remaining \$5,539.50.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Tenants owe the Landlord \$5,923.00. The Landlord can keep the \$383.50 security deposit. The Landlord is issued a Monetary Order for the remaining \$5,539.50. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 22, 2021

Residential Tenancy Branch