



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BURNABY LOUGHEED LIONS HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, CNQ

Introduction

On March 26, 2021, the Tenant applied for a Dispute Resolution proceeding seeking an Emergency Repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

On April 12, 2021, the Tenant amended her Application; however, no changes were indicated on this Amendment form.

The Tenant attended the hearing with R.F. attending as her advocate. C.R. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

R.F. advised that he served C.R. with the Notice of Hearing package by hand on or around March 29, 2021 and C.R. confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

R.F. also advised that he did not serve the Amendment to the Landlord nor did he submit any evidence for consideration on this file. Even though there were no changes

made in the Tenant's Amendment form, as this form was not served to the Landlord pursuant to Rule 4.6 of the Rules of Procedure, the Amendment will not be considered.

C.R. advised that he served the Tenant with the Landlord's evidence package by posting it to the Tenant's door on June 14, 2021, and the Tenant confirmed that she received this package on that day. Based on this undisputed testimony, as this evidence was received in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties advised that a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the "Notice") was served to the Tenant. The Tenant was seeking to cancel this Notice pursuant to Section 49.1 of the *Act* and the Landlord was seeking an Order of Possession based on the Notice. Both parties agreed to amend the Application today to address this Notice only.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2016, that rent was currently established at some unspecified subsidized amount, and that it was due on the first day of each month. A security deposit of around \$398.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

C.R. advised that the Landlord served the Notice by posting it to the door on February 23, 2021 and the Tenant confirmed that she received this Notice that day. The reason that the Landlord checked off on the Notice was because "The tenant no longer qualifies for the subsidized rental unit." The Notice indicated that the effective end date of the tenancy was April 30, 2021.

R.F. advised that he was not aware of the Dispute Resolution process and he believed that the Notice was disputed when either the Application was filed or when the Amendment was made.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I have reviewed the Landlord's Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenant received the Notice on February 23, 2021. According to Section 49.1(5) of the *Act*, the Tenant has 15 days after the date she receives the Notice to dispute it. Section 49.1(6) of the *Act* states that "*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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.*"

As the Notice was received on February 23, 2021, the Tenant would have had until Wednesday March 10, 2021 to dispute this Notice. However, the undisputed evidence is that the Tenant did not dispute this Notice in the original Application or by way of the Amendment.

Consequently, I am satisfied that the Tenant has been conclusively presumed to have accepted the Notice. As the Landlord's Notice is valid, and as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 49.1 of the *Act*. C.R. advised that he would be amenable in allowing the Tenant to stay longer. As such, pursuant to Section 55 of the *Act*, I grant an Order of Possession that takes effect at **1:00 PM on July 31, 2021**.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective at **1:00 PM on July 31, 2021** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 22, 2021

Residential Tenancy Branch