



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'akola Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on February 4, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a 2-Month Notice to End Tenancy because the Tenant no longer qualifies for subsidized housing (the Notice)
- recovery of the filing fee

The Landlord's Agent (the "Landlord") provided testimony at the hearing. The Tenants did not attend the hearing.

The Landlord testified that she mailed the Notice of Hearing and evidence to each of the Tenants on October 1, 2021. Proof of mailing was provided. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenants are deemed to have received the Notice of Hearing on October 6, 2021.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

The Landlord testified that she served the Tenants with the Notice by sending it to the rental unit by registered mail on June 22, 2021. The effective date of the Notice is listed as August 31, 2021.

As per the tenancy agreement provided into evidence, the Landlord holds a security deposit in the amount of \$465.00.

The Notice indicates the reasons for ending the tenancy are:

- The Tenant no longer qualifies for subsidized housing

The Landlord explained that the Tenants no longer meets their criteria for housing, and can no longer live in the unit as they have not complied with the financial disclosure requirements for rental subsidies.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49.1 of the *Act* permits a landlord to end a tenancy if the Tenant no longer qualifies for subsidized housing. A tenant who receives a notice to end tenancy under this part of the *Act* has 15 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy.

In this case, the Landlord issued the Notice on the bases indicated above. Based on the Landlord's testimony, I am satisfied that the Landlord served the Tenants with the Notice, by sending it by registered mail on June 22, 2021. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenants received the Notice on June 27, 2021.

The Tenants had 15 days after receipt of the Notice, until July 12, 2021, to dispute the notice. There is no evidence the Tenants applied to dispute the Notice. Accordingly,

pursuant to section 49.1 (6) of the *Act*, I find the Tenants are conclusively presumed to have accepted the end of the tenancy.

The Landlord is entitled to an order of possession, which will be effective 2 days after it is served on the Tenants.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenants to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. Section 72 of the *Act* also allows me to authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit, leaving a security deposit balance of \$365.00. The remaining security deposit must be dealt with in accordance with the *Act*.

Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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 *Residential Tenancy Act*.

Dated: February 04, 2022

Residential Tenancy Branch