



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Notice), pursuant to sections 49 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:18 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was assisted by agent MM. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, her agent and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on September 27, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on October 02, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing the landlord corrected the spelling of her first name.

Pursuant to section 64(3)(a) of the Act, I have amended the application.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the Notice?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started in February 2019. Monthly rent is \$800.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$400.00 was collected and the landlord holds it in trust.

The landlord served the Notice on August 23, 2021 by attaching it to the rental unit's front door. The landlord submitted a proof of service form (RTB34) indicating the Notice was attached to the rental unit's door on August 23, 2021 at 11:00 A.M. The landlord also submitted two photographs showing the Notice attached to the rental unit's door.

The Notice was submitted into evidence. The Notice is dated July 26, 2021 and the effective date is September 30, 2021. It is signed by the landlord's agent. The landlord stated the tenant did not dispute the Notice and continues to occupy the rental unit. The landlord testified the tenant told her on October 01, 2021 that she plans to continue to occupy the rental unit until the landlord obtains an order of possession and that her last name has a different spelling (recorded on the cover page of this decision). The

landlord said the tenant receives mail containing her last name spelled as it is in this application and that she was not aware of the different spelling.

The reason to end the tenancy is: the landlord will occupy the rental unit.

Analysis

Based on the convincing testimony offered by the landlord, the proof of service form and the two photographs, I find the landlord served the Notice on August 23, 2021, per section 88(g) of the Act. The tenant is deemed to have received the Notice on August 26, 2021, per section 90(c) of the Act.

Sections 49(8) and (9) of the Act state:

(8)A tenant may dispute

(a)a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b)a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

Section 49(9) of the Act is mandatory, and I do not have discretion as to its application. Based on the testimony offered by the landlord, I find that the tenant did not file an application to dispute the notice.

Per section 49(2)(a) of the Act, the effective date of the Notice must be not earlier than 2 months after the date the tenant receives the Notice and the day before the day in the month that rent is payable. Pursuant to section 53(2) of the Act, the effective date is corrected to October 31, 2021. Otherwise, the Notice is in accordance with Section 52 of the Act, as it is signed by the landlord's agent, gives the address of the rental unit, the grounds to end the tenancy and is in the approved form.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the Notice (October 31, 2021) and must move out of the rental unit. As this has not occurred, I find that the landlord is entitled to an

order of possession effective two days after service, pursuant to section 55(2)(b) of the Act.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

I warn the tenant that she may be liable for any cost the landlord incurs to enforce the order of possession.

Conclusion

I grant an order of possession to the landlord effective **two days 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.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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 01, 2022

Residential Tenancy Branch