



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ, OPR, MNRL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 05, 2022 (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 dated October 25, 2021 (the “Notice”)
- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 09, 2021 (the “10 Day Notice”)
- To recover unpaid rent
- To recover the filing fee

J.S. appeared at the hearing for the Landlord. The Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

At the hearing, J.S. advised that the Landlord is not seeking an Order of Possession based on the 10 Day Notice.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I confirmed service of the hearing package and Landlord's evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. 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 recover the filing fee?

Background and Evidence

Two written tenancy agreements were submitted as evidence and the parties agreed they are accurate. The parties agreed rent has been \$382.00 per month due on the first day of each month since January 01, 2022.

The Notice has an effective date of December 31, 2021. The grounds for the Notice are that the Tenant no longer qualifies for the subsidized rental unit.

The Landlord testified that the Notice was posted on the Tenant's mailbox October 25, 2021. The Tenant testified that they received the Notice October 26, 2021.

The Tenant advised that they did not file a dispute of the Notice with the RTB. The Tenant did not raise any legal issue with the Notice during the hearing.

J.S. testified that the Tenant currently owes \$2,028.00 in rent. I asked the Tenant if they agreed with this and the Tenant responded that they do not know and then said they guessed so. The Tenant advised that they did not have authority under the *Residential Tenancy Act* (the "Act") to withhold rent.

J.S. sought an Order of Possession effective April 30, 2022.

The Landlord submitted documentary evidence; however, I do not find it necessary to detail here given the testimony of the parties.

Analysis

Order of Possession

The relevant portions of the *Act* state:

Landlord's notice: tenant ceases to qualify for rental unit

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.

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution...

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired...

Based on the testimony of the parties, I accept that the Tenant received the Notice October 26, 2021.

I find the Tenant did not dispute the Notice because the Tenant acknowledged this. Further, the Tenant did not raise any legal issue with the Notice during the hearing. In the circumstances, I find section 49.1(6) of the *Act* applies and the Tenant is conclusively presumed to have accepted that the tenancy ended December 31, 2021, the effective date of the Notice. The Tenant was required pursuant to section 49.1(6)(b) of the *Act* to vacate the rental unit by December 31, 2021.

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

The Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the *Act* and is issued an Order of Possession effective at 1:00 p.m. on April 30, 2022.

Unpaid rent

The relevant portions of the *Act* state:

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

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 Tenant currently owes \$2,028.00 in unpaid rent because the Tenant did not dispute this. I find the Tenant did not have authority under the *Act* to withhold rent because the Tenant acknowledged this. In the circumstances, the Tenant owes the Landlord \$2,028.00.

Filing fee

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

In total, the Landlord is entitled to \$2,128.00 and is issued a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 30, 2022. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is entitled to \$2,128.00 and is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court 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 04, 2022

Residential Tenancy Branch