



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harron Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL FF

Introduction

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

- an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use (the Notice)

Both parties attended the hearing and provided affirmed testimony. The Landlord provided registered mail tracking information to show that they sent the Notice of Hearing and evidence to the Tenant at the rental unit on February 12, 2022. The Tenant acknowledged receipt of this package. The Tenant stated he sent his evidence to the Landlord by regular mail on April 17, 2022. The Tenant did not use registered mail and did not have any proof of mailing. The Tenant also stated he dropped the evidence off to the Landlord's office mailbox on April 22, 2022. With respect to the Tenant's evidence package sent by mail, I note he had no evidence to support when this was sent. As such, I decline to deem that it was served 5 days after it was mailed, pursuant to section 90 of the Act, as there is insufficient evidence showing when this was done. With respect to the package the Tenant dropped off at the Landlord's mailbox, I note this was not done until April 22, 2022, and no proof of service was provided. Even if I accepted that this document was left in the Landlord's mailbox on April 22, 2022, I note that documents delivered in this manner are not deemed served until 3 days after it was left at the mailbox. I find this package left at the mailbox was served late, and outside of the Rules, which state that the applicant must receive the respondents evidence no later than 7 days before the hearing, which would have been April 22, 2022. The Tenant did not allow 3 days for receipt of the documents, and the Landlord stated he was prejudiced by the late service. I find the package left in the Landlord's mailbox on April

22, 2022, is not admissible, as it has not been served in accordance with the Rules and the Act.

With respect to the Tenant's first package, sent by regular mail, I note there is insufficient evidence as to when this was mailed. The Landlord acknowledged getting the package on April 23, 2022, but he took issue with the late service of the documents, as there were challenges in reviewing the evidence prior to the hearing. With respect to this first package, sent by regular mail, I find there is insufficient evidence that the Tenant complied with the timelines for providing this evidence to the Landlord. The Landlord asserted that he takes issue with the late service, as it was prejudicial to his review of the evidence. I find this package is also not admissible, as the Tenant has no proof of service or proof of mailing, showing he sent it by mail within the allowable time frame. I find the Tenant's evidence is not admissible, and will not be considered further.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. 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*, based off the Notice?

Background and Evidence

The Landlord stated that they issued this Notice because the owner of the building needs this rental unit for his son. The Landlord served the Tenant with the Notice on October 28, 2021. The Tenant acknowledged receiving the Notice this day.

The Notice indicated the following grounds for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
 - The child of the Landlord or Landlord's spouse

The Tenant had received the Notice and filed an application to dispute the Notice on November 9, 2021. A hearing was held on January 25, 2022. However, since the Tenant failed to provide the required documents for his application, the Arbitrator

dismissed his application. No order of possession was issued at that time, since there was no Notice provided into evidence at that time, and the Landlord was given leave to apply for an order of possession. Subsequently, the Landlord applied for this application to get an order of possession based off the Notice.

The Tenant asserts that the Landlord can and should use some of the other empty rental units in the building to accommodate his son. The Tenant would like to remain in the rental unit.

Analysis

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

After reviewing the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. Section 49(3) of the *Act* permits a landlord to end a tenancy for Landlord's Use. 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 in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 49(9) of the *Act*.

In this case, the Landlord issued the Notice because the owner's son wants to move into the rental unit.

The Tenant acknowledged receipt of the Notice on October 28, 2021.

The Tenant had 15 days after receipt of this Notice, until November 12, 2021, to dispute it with our office. Although the Tenant initially applied within the allowable time frame, his application was dismissed, as he failed to provide required documents, as laid out in the Rules of Procedure. This has the same effect as not applying to dispute the Notice at all. Accordingly, pursuant to section 47(5) of the *Act*, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice.

Based on this, and the Landlord's testimony supporting why it was issued, I find the Landlord is entitled to an order of possession, which will be effective **two days after service** on the Tenant.

Pursuant to section 72 of the Act, I award the recovery of the filing fee paid by the Landlord. I authorize the Landlord to retain \$100.00 from the security deposit held.

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: April 29, 2022

Residential Tenancy Branch