



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPL-4M

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for conversion of a rental unit, pursuant to section 49; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution 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."

Both parties confirmed their address for service of this decision.

Both parties agree that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail in April of 2022. I find that the above documents were served in accordance with sections 88 and 89 of the *Act*. The tenant did not provide documentary evidence for consideration.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for landlord's use of property, pursuant to section 49 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in the late 1980s. Monthly rent in the amount of \$709.00 is payable on the first day of each month. The tenant paid a security deposit of \$250.00.

The landlord testified that the tenant was served with a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the "Notice") via posting and registered mail on September 23, 2021. The tenant confirmed receipt via registered mail but could not recall when. The Notice was entered into evidence, is dated September 23, 2021, is signed by the landlord, has an effective date of January 31, 2022, states the grounds for ending the tenancy "convert the rental unit for use by a caretaker, manager, or superintendent of the residential property" and is in the approved form.

The landlord entered into evidence a Canada Post registered mail receipt for the September 23, 2021 mailing.

Both parties agree that in a previous application for dispute resolution the tenant applied to cancel the Notice, and on March 7, 2022 a hearing was held. The tenant filed to cancel the Notice on October 25, 2021. The file number for the previous hearing is located on the cover page of this decision.

Both parties agree that the tenant did not attend the hearing and the tenant's application for dispute resolution was dismissed without leave to reapply. The landlord attended the previous hearing, but neither party submitted a copy of the Notice into evidence for consideration so the landlord was not, at that time, eligible for an Order of Possession

because the section 52 requirements for the granting of an Order of Possession could not be ascertained, as required by section 55(1) of the *Act*.

In the previous hearing, the landlord was granted leave to apply for an Order of Possession pursuant to the Notice. This application was filed pursuant to that leave.

The tenant testified that he did not attend the previous hearing because he had telephone issues. The tenant testified that he did not file an application for Review Consideration of the previous decision and has not filed for Judicial Review of the previous decision.

The tenant testified that he had two copies of the Notice in front of him during the hearing, one that was signed by the landlord and one that was not signed. The tenant testified that he did not know when each were served. The landlord testified that the Notice served on September 23, 2021 was signed, but the copy she sent as evidence for this application for dispute resolution was an earlier unsigned copy that she sent in error. The Notice entered into evidence is signed by the landlord.

The landlord testified that she is getting older and that her partner and her feel that the subject rental property is a burden to take care of and so they would like to get a caretaker to live in the subject rental building in the unit currently occupied by the tenant.

The tenant testified that he believes the landlord plans to develop the subject rental property and that he is getting evicted so that they don't have to pay him compensation. The tenant testified that he is a long-term tenant and that a more recent tenant should have been chosen.

Analysis

Based on the testimony of both parties and the evidence provided, I find that the tenant was deemed served with the Notice on September 28, 2021, five days after its registered mailing, in accordance with section 88 of the *Act*.

I accept the landlord's testimony that the Notice served on the tenant on September 23, 2021 was signed. Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 55(1) of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In the previous hearing, I dismissed the tenant's application to cancel the Notice without leave to reapply for failure to attend the hearing. The tenant did not apply for Review Consideration or Judicial Review of the March 7, 2022 Decision, and so the March 7, 2022 Decision stands and is valid.

In this hearing I found that the Notice complies with section 52 of the *Act*. Pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession because the tenant's application to cancel the Notice was dismissed without leave to reapply and because the Notice complies with section 52 of the *Act*. As the effective date of the Notice has expired, I find that the landlord is entitled to a two-day Order of Possession.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

The landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: May 31, 2022

Residential Tenancy Branch