



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

On June 20, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on September 12, 2022.

The Landlord attended the hearing, with C.F. attending as an agent for the Landlord; however, the Tenant did not make an appearance at any point during the 18-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, the Landlord provided a solemn affirmation.

C.F. advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on July 11, 2022, and that the package was returned to sender (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received this package five days after it was mailed. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are

described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that he never created a signed tenancy agreement in accordance with the *Act*. He stated that the tenancy started on June 1, 2015, that rent was supposed to be owed in the amount of \$1,050.00 per month, and that it was due on the first day of each month. However, he claimed that the Tenant never paid him any rent. He testified that the Tenant did pay a security deposit of \$525.00 though.

C.F. then advised that the Notice was served to the Tenant's adult son by hand on February 25, 2022. He referenced the proof of service document submitted as evidence to corroborate this. The reason this Notice was served was because "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)." As well, the Landlord checked off the box indicating that it would be "The landlord or the landlord's spouse" that would be occupying the rental unit. The effective end date of the tenancy was noted as May 1, 2022, on the Notice. A copy of this Notice was submitted as documentary evidence for consideration.

The Landlord advised that he owns the rental unit, that the Tenant replied to him stating that she would not be moving out after she received the Notice, and that she never disputed the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In considering this matter, I have reviewed the Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

Based on the undisputed evidence before me, I am satisfied that the Notice was served to an adult that resides with the Tenant on February 25, 2022, in accordance with Section 88 of the *Act*. According to Section 49(8) of the *Act*, the Tenant had 15 days to dispute this Notice, and Section 49(9) of the *Act* states that *"If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."*

After being served the Notice, the fifteenth day fell on Saturday March 12, 2022, and the undisputed evidence is that the Tenant did not dispute this Notice at all. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant was conclusively presumed to have accepted the Notice, pursuant to Section 49(9) of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession pursuant to Section 55(2) of the *Act*. Consequently, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Section 72 of the *Act*,

I allow the Landlord to retain this amount from the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. 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.

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: September 12, 2022

Residential Tenancy Branch