



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPQ, FFL

Introduction

The hearing was convened in response to an Application for Dispute Resolution filed by the Landlord, in which the Landlord applied for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on December 20, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on December 15, 2022 was sent to the Tenant, via registered mail, at the rental unit. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Agent for the Landlord affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Agent for the Landlord affirmed that she would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began in September of 2020;
- the Tenant pays subsidized rent, which is due by the first day of each month;
- the Tenant did not provide information regarding annual income and household composition when it was requested by the Landlord;
- the Landlord requested this information, in writing, on June 25, 2022 and July 15, 2022;
- the deadline for providing the requested information was August 15, 2022;
- on September 23, 2022, a Two Month Notice to End Tenancy was sent to the rental unit, via registered mail;
- the Two Month Notice to End Tenancy declares that the tenancy is ending because the Tenant no longer qualifies for subsidized rent; and
- the Two Month Notice to End Tenancy for Landlord's Use declares that the unit must be vacated by November 30, 2022; and
- the rental unit has not been vacated.

Analysis

Section 49.1 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if the tenancy agreement permits the landlord to 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.

On the basis of the tenancy agreement and addendum submitted in evidence, I find that the agreement authorizes the Landlord to end the tenancy of the subsidized rental unit if the Tenant does not provide information about income and household composition “at least annually”.

On the basis of the undisputed testimony, I find that the Tenant did not provide information about his annual income and family composition after it was requested by

the Landlord on at least two occasions. I therefore find that the Landlord had the right to serve notice that the tenancy was ending pursuant to section 49.1 of the *Act*.

On the basis of the Agent for the Landlord's testimony and Canada Post documentation submitted in evidence, I find that the Two Month Notice to End Tenancy, dated September 23, 2022, was sent to the Tenant on September 23, 2022. This Two Month Notice to End Tenancy is deemed received on September 28, 2022, pursuant to section 90 of the *Act*. I find that this Two Month Notice to End Tenancy served as proper notice that the tenancy was ending pursuant to section 49.1 of the *Act*.

The Agent for the Landlord stated that the Two Month Notice to End Tenancy for Landlord's Use was returned to the Landlord by Canada Post, after it was not claimed by the Tenant. She stated that it was then personally served to the Tenant on November 09, 2022. In the absence of evidence to the contrary, I find that this Notice to End Tenancy was received on November 09, 2022.

Section 49.1(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 49.1 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within 15 days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Two Month Notice to End Tenancy, I find that the Tenant accepted that the tenancy was ending on the effective date of the Notice, which was November 30, 2022.

As the rental unit has not been vacated, I grant the Landlord an Order of Possession, pursuant to section 55 of the *Act*.

I find the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2023. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution, and I grant the Landlord a monetary

Order for \$100.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: February 17, 2023

Residential Tenancy Branch