



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPL, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on November 8, 2022 seeking an order of possession of the rental unit. Additionally, they applied for the cost of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 20, 2023. In the hearing, I provided the attending party – the Landlord – the opportunity to ask questions.

Issues to be Decided

Is the Landlord entitled to an Order of Possession in line with the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”)?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Preliminary Matter – notification to the Respondent Tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve each Tenant with this Notice of Dispute Resolution Proceeding. This means the Landlord must provide proof that they served the document in a verified manner allowed under s. 89 of the *Act*, and I must accept that evidence.

The Landlord provided evidence they served the Notice of Dispute Resolution Proceeding to each Tenant separately, via registered mail. The receipt and registered mail label they provided (with tracking # information) shows the Landlord’s transaction

at the post office on November 23, 2022, after they received the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch. This was to the rental unit where the Tenants resided on that date. The envelope shows a list of all contents therein.

I accept the Landlord's evidence that they served the Notice, including their evidence, to the Tenants with registered mail. This is sufficient for the purposes of the *Act*. Based on the submissions of the Landlord, I accept they served notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*. The hearing proceeded in the Tenants' absence.

Background and Evidence

The Landlord provided a copy of the tenancy agreement they had in place with this Tenant, commencing on August 22, 2016. This was for the rent amount of \$2,415.70 each month. The Tenant paid a security deposit amount of \$1,150.

The Landlord issued the Two-Month Notice on October 21, 2022, for the end-of-tenancy date of December 21, 2022. This was based on the rent payment date of the 22nd each month.

As of the date of this hearing, the Landlord advised the Tenant moved out and returned the key for the rental unit to the Landlord. This was on March 20, 2022, the day before this scheduled hearing.

The document itself provides that the Tenant had 15 days from the date received to challenge the end of tenancy via dispute resolution. If they did not apply to dispute, the tenancy would end on the date indicated, December 21, 2022.

The Tenant did not attend the hearing to speak to this matter. There is thus no record of the Tenant applying to dispute the Two-Month Notice.

The Landlord advised the Tenant stayed past the set end-of-tenancy date of December 21, 2022. The Landlord questioned whether the Tenant was still entitled to one month of free rent that would normally accompany an end-of-tenancy notice of this type, in this situation where the Tenant did not move out the date set out on the Two-Month Notice.

The Landlord also made an inquiry on the scenario where the Tenant did not provide a forwarding address at the end of the tenancy.

Analysis

From what the Landlord presented, I am satisfied that a tenancy agreement was in place.

I find the Landlord served the Two-Month Notice to the Tenant on October 21, 2022 as shown in the evidence. The Tenant did not apply to challenge the end of tenancy within the 15-day period. On my review of the document, the Two-Month Notice contains the necessary elements for it to be effective; therefore, it complies with the necessities of s. 52 regarding form and content.

Based on the foregoing, I find that the Tenant is conclusively presumed under s. 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the Two-Month Notice, December 21, 2022. I so grant the Landlord an Order of Possession pursuant to s. 55(2)(b) of the *Act*. This is a measure of surety to the Landlord, and is their legal entitlement, even though the Tenant already moved out from the rental unit.

I order the Landlord to retain \$100 from the Tenant's security deposit of \$1,150 in full satisfaction of the monetary award for the filing fee. This is authorized by s. 38(4) and s. 72(2)(b) of the *Act*.

The remainder of the Tenant's security deposit of \$1,150 must be dealt with in accordance with s. 38 of the *Act*. That section of the *Act* positively places the responsibility for giving a forwarding address on the Tenant. As well, s. 39 authorizes the Landlord to keep the security deposit if the Tenant does not provide a forwarding address within one year after the end of the tenancy.

Though the Tenant stayed past the end-of-tenancy date set in the Two-Month Notice, the Tenant retains the right to the equivalent of one month's rent as per s. 51 of the *Act*. That accompanies any notice to end tenancy issued by the Landlord under s. 49 of the *Act*. There is no exception where a tenant has overstayed the end-of-tenancy date.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 21, 2023

Residential Tenancy Branch