



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPQ, FFL

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession on the basis that the Tenant no longer qualifies for the subsidized rental unit pursuant to a 2 month Notice to End Tenancy dated May 29, 2018 and setting the end of tenancy for August 31, 2018.
- b. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of two representatives of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 2 month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on May 29, 2018. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenant by mailing, by registered mail to where the tenant resides on September 28, 2018. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on September 1, 2005. The rent is subsidized and the present rent is \$292 per month payable in advance on the first day of each month. The Tenant did not pay a security deposit.

Section 49.1 provides as follows:

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

The tenant failed to file an Application for Dispute Resolution to dispute the Notice to End Tenancy and the time to do so has expired.

Further, I determined the rental unit is a subsidized rent unit as defined by section 49.1 of the Act. The landlord is a public housing body. The rental unit is occupied by a tenant who is required to demonstrate that the tenant met the eligibility criteria related to income and number of occupants.

I determined the tenant does not qualify. She was accepted for housing in the two bedroom unit on the basis that the tenant's daughter was living with her. She no longer has custody and the daughter is no longer living with the tenant. The landlord produced a number of e-mails and correspondence between the tenant and the landlord after the landlord became aware of this change in circumstances in 2016.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order of Possession. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides 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. Further I accept the evidence given by the landlord that the Tenant no longer qualifies for the rental unit and the landlord is entitled to an Order of Possession under section 49.1. As the request of the landlord I set the effective date of the Order of Possession for January 31, 2019.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I further ordered that the tenant pay to the landlord the cost of the filing fee in the sum of \$100.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: November 08, 2018

Residential Tenancy Branch