



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ

Introduction

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

- an Order of Possession as the tenant does not qualify for subsidized rental unit, pursuant to sections 49.1 and 55 of the *Act*.

The landlord's agent attended at the date and time set for the hearing of this matter, on the behalf of the landlord, a provincial Crown corporation which administers subsidized housing.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:46 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

As the tenant did not attend the hearing, I asked the landlord's agent to confirm that the tenant was served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was served the landlord's notice of this hearing by Canada Post registered mail on October 23, 2018 and provided a Canada Post registered mail tracking number (noted on the cover sheet of this Decision) and a tracking report as proof of service. As the tracking report was not up-to-date, with the agreement of the landlord's agent, I accessed the Canada Post website and found that the package was "unclaimed" by the tenant.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or ‘deemed’ received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the tenant was deemed served with the notice of this hearing on October 28, 2018, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue – Amendment of Landlord’s Application

The landlord’s agent requested that the landlord’s Application for Dispute Resolution be amended to correct an error noted in the address of the rental unit. The landlord’s agent stated that the address of the rental unit is on a “Street” not an “Avenue” as stated in the Application.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord’s Application to correct the rental unit address to reflect “Street”.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted into documentary evidence by the landlord, setting out the following terms of this tenancy:

- This month-to-month tenancy began August 1, 2011.
- Rent is subsidized and the tenant’s monthly contribution is \$667.00 payable on the first of the month.
- The tenant did not pay a security deposit at the beginning of the tenancy.

The landlord's agent testified that the tenant's family composition has changed due to her children no longer residing with her in the rental unit. As such, the tenant no longer qualifies for the three-bedroom rental unit in which she resides. The tenant now qualifies for a bachelor or one-bedroom rental unit. The landlord's agent testified that the tenant was offered a transfer to a rental unit for which she would qualify, but the tenant has refused to accept this offer or move from the rental unit.

The landlord's agent testified that he personally served the tenant with the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (herein referred to as the "Two Month Notice") on July 31, 2018 at approximately 1:35 p.m. at the rental unit. The landlord's agent testified that he has not received an application from the tenant disputing the Two Month Notice.

Analysis

Section 49.1(2) of the *Act* provides that a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy, if the tenant ceases to qualify for the rental unit.

In this case, I accept the sworn testimony of the landlord's agent that he personally served the tenant with the Two Month Notice on July 31, 2018.

Section 15 of Residential Tenancy Policy Guideline #12. Service Provisions explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

As the landlord's agent was the person who "actually served the documents" and he was able to testify to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord was able to prove service of the Two Month Notice on the tenant.

As such, I find that the tenant was deemed in receipt of the Two Month Notice on July 31, 2018.

Section 49.1(5) of the *Act* provides that a tenant may dispute the notice to end tenancy by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

I find no evidence before me that the tenant filed an application for dispute resolution within the 15 days of receipt of the notice, as provided under section 49.1(5) of the *Act*.

Section 49.1(6) of the *Act* states that a tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice to end tenancy if the tenant fails to make an application for dispute resolution in accordance with section 49.1(5) of the *Act*.

Accordingly, I must consider if the landlord is entitled to an Order of Possession under section 55 of the *Act*, based on the fact the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice as provided by section 49.1(6) of the *Act*. In this case, the effective vacancy date of the notice was September 30, 2018.

For an Order of Possession to be granted to a landlord, sections 49.1(4) and 55 of the *Act* require that a landlord's notice to end tenancy for cause must comply with the form and content requirements of section 52 of the *Act*.

In considering this matter, I have reviewed the landlord's Two Month Notice to determine if it is compliant with the requirements of section 52 of the *Act*. After reviewing the Two Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord or landlord's agent, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

As I have made a finding that the tenant is conclusively presumed to have accepted the tenancy ended on the effective vacancy date of the Two Month Notice, and that the Two Month Notice complies with section 52 of the *Act*, the landlord must be granted an Order of Possession. As the effective vacancy date of the Two Month Notice has now passed, this Order of Possession will be effective two days after service upon the tenant by the landlord.

Conclusion

I grant an Order of Possession to the landlord effective two days after service upon the tenant. The landlord must serve this Order on the tenant as soon as possible. Should the tenant or anyone on the premises 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: November 29, 2018

Residential Tenancy Branch