



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This is an Application for Dispute Resolution brought forward by the landlord pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Landlord's Use of Property pursuant to sections 49 and 55 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord's agent attended on behalf of the landlord at the date and time set for the hearing of this matter. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution. 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 only the landlord's agent attended the hearing, I asked the landlord's agent to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was sent the landlord's notice of this hearing by Canada Post registered mail on October 5, 2018, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. The landlord's agent testified that the package was sent to the tenant at the rental unit address but was returned to the landlord as "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 when it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt for service of documents by registered mail, 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.

As such, I find that the tenant was served with the notice of this hearing in accordance with section 89 of the *Act* and deemed to have received the notice of this hearing on October 10, 2018, the fifth day after mailing, in accordance with section 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the notice to end tenancy issued for landlord’s use of property?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

A written tenancy agreement was not submitted into documentary evidence, however, the landlord’s agent provided unchallenged testimony regarding the following terms of the tenancy agreement. This tenancy began on October 1, 2010 as a one-year fixed term tenancy. At the end of the fixed term, the tenancy converted to a month-to-month tenancy. The current monthly rent of \$900.00 is payable on the first day of the month. A security deposit of \$450.00 was paid at the start of the tenancy, which the landlord continues to hold. The tenant continues to reside in the rental unit at the time of this hearing.

The landlord’s agent testified that a Two Month Notice to End Tenancy for Landlord’s Use of Property (Two Month Notice), was sent to the tenant by Canada Post registered mail on July 11, 2018. This testimony was supported by a Canada Post registered mail receipt with tracking number (recorded on the cover sheet of this decision) that was submitted as documentary evidence by the landlord. The landlord also submitted into

documentary evidence the registered mail tracking report which confirms that the Two Month Notice was delivered to and signed for as received by the tenant on July 19, 2018. In accordance with section 88 of the *Act*, I find that the tenant was served with the Two Month Notice on July 19, 2018, as shown in the registered mail tracking report.

The landlord submitted a copy of the Two Month Notice into documentary evidence. The reason selected by the landlord for ending the tenancy, as stated on the form, is:

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).

The effective vacancy date provided on the notice is September 30, 2018.

The landlord's agent testified that the landlord and his wife are "downsizing" and are going to sell their current home and intend to reside in the rental unit.

The landlord's agent testified that the landlord has not received any application from the tenant disputing the Two Month Notice. As the effective vacancy date of the Two Month Notice has now passed, and the tenant continues to reside in the rental unit, the landlord's agent testified that the landlord does not believe the tenant will willingly vacate the rental unit. As such, the landlord is seeking an Order of Possession on the basis of the undisputed Two Month Notice.

Analysis

Section 49 of the *Act* contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy.

In considering this matter, I have reviewed the landlord's Two Month Notice to end the tenancy uploaded into documentary evidence to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the Two Month Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord's agent; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

Pursuant to section 49(8) of the *Act*, a tenant may dispute a Two Month Notice by making an application for dispute resolution within 15 days after the date the tenant received the notice. I have found that the tenant received the landlord's Two Month Notice on July 19, 2017.

I accept the evidence before me that the tenant failed to dispute the Two Month Notice within the 15 days granted under section 49(8) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy would end on the vacancy effective date of the Two Month Notice, September 30, 2018.

Pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession. As the effective date to vacate the rental unit has now passed, the Order of Possession is effective two days after service on the tenant.

As the landlord was successful in this application, the landlord may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the tenant. In place of a monetary award, I order that the landlord withhold \$100.00 from tenant's security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord **effective two days after service of this Order on the tenant**. The landlord is provided with this Order in the above terms and the tenant must be served with this Order 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.

I order that the landlord withhold \$100.00 from tenant's security deposit in satisfaction of the return of the filing fee for this application.

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 16, 2018

Residential Tenancy Branch