



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

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

- an order of possession for landlord's use of property pursuant to section 55;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 19, 2019. The landlord provided copies of the Canada Post Customer Receipt and Tracking Labels. The landlord stated that this package was returned by Canada Post as "unclaimed" by the tenant after attempted service was made.

I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served as per sections 88 and 89 of the Act. Although the tenants failed to claim the package, the tenants are deemed served as per section 90 of the Act, 5 days later on September 24, 2019.

At the outset, the landlord stated that one of the two tenants vacated the premises, but that the other still occupies the space and has numerous personal property left throughout the rental property.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided affirmed testimony that this tenancy originally began on a fixed term which later became a month to month tenancy.

The landlord stated that the tenants were served with the 2 month notice for landlord's use dated August 21, 2019 by Canada Post Registered Mail on August 21, 2019. The stated effective end of tenancy date is October 31, 2019. The landlord stated that this package was returned as "unclaimed" by the tenants. The 2 month notice states that the reason selected was:

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 landlord stated that his son will be occupying the rental space.

Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, I accept the landlord's undisputed affirmed evidence that the 2 month notice dated August 21, 2019 was issued and served to the tenants via Canada Post Registered Mail on August 21, 2019. Although the tenants failed to claim this package, I find that pursuant to section 90 of the Act, the tenants are deemed sufficiently served.

Pursuant to section 49(9) a tenant who has received a notice under this section does not make an application for dispute resolution, 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.

I find based upon the undisputed evidence of the landlord that the tenants have conclusively presumed to have accepted that the tenancy was at an end as per the 2

month notice. The landlord is entitled to an order of possession. As the effective end of tenancy date has now passed, the order shall be effective 2 days after it is served upon the tenants.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Courts.

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 19, 2019

Residential Tenancy Branch