



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPQ, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a Two Month Notice to End Tenancy because the tenant does not qualify for subsidized rental unit (the Notice), pursuant to sections 49.1 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:13 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by property manager DS (the landlord) and director of housing JC, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness FL also attended. 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, her witness and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on January 07, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on January 12, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the Notice?
2. an authorization to recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the attending party, not all details of her submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord affirmed the tenancy started on April 15, 2002. Monthly rent is \$790.00, due on the first day of the month. At the outset of the tenancy the landlord collected and still holds a security deposit of \$250.00.

The landlord affirmed the Notice was served in person on November 04, 2020. The landlord provided a witnessed proof of service form (RTB-34) in evidence.

The Notice was entered into evidence. It indicates the tenant no longer qualifies for the subsidized rental unit and the effective date is January 31, 2021.

The tenant did not dispute the Notice and continues to occupy the rental unit.

Analysis

Based on the landlord's undisputed testimony and the proof of service form, I find the tenant received the Notice on November 04, 2020 in accordance with section 88(a) of the Act. I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy and is in the approved form.

Based on the landlord's undisputed testimony I find that the tenant did not file an application to dispute the Notice within 15 days of receiving it, or at all.

Pursuant to section 49.1(6)(a) the tenant is conclusively presumed to have accepted the end of the tenancy on January 31, 2021 and must vacate the rental unit. As this has not occurred, I find that the tenancy ended on January 31, 2021 and pursuant to section 55(2)(b) of the Act, the landlord is entitled to an order of possession effective two days after service.

As landlord was successful with her application, pursuant to section 72 of the Act, I authorize the landlord to recover the \$100.00 filing fee. I order that this amount may be deducted from the security deposit.

Conclusion

Pursuant to section 55(2)(b) of the Act, 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

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: March 30, 2021

Residential Tenancy Branch