



Dispute Resolution Services

Page: 1

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 1:41 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by property manager KM (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The landlord attached the notice of hearing and the evidence (the materials) to the tenant's front door on April 14, 2022, at 2:53 P.M. The landlord submitted a photograph of the materials attached to the tenant's front door.

Based on the landlord's convincing testimony and the photograph, I find the landlord served the materials in accordance with section 89(2)(d) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received on the 3rd day after it was attached to the rental unit's door. The tenant is deemed to have received the materials on April 17, 2022, in accordance with section 90(c) 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?
2. An authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on November 01, 2013. Monthly rent is \$1,788.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$383.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord stated the rental unit is not located on reserve lands for first nations and that the rental unit is a subsidized rental unit.

The landlord testified she served the Notice to the tenant via registered mail on November 25, 2021. The landlord mailed the Notice to the tenant at the rental unit's address. The tracking number is recorded on the cover page of this decision.

A copy of the 2 month Notice was provided. The 2 month Notice is dated November 25, 2021 and the effective date is January 31, 2022. It states: "the tenant no longer qualifies for the subsidized rental unit.

The landlord said the tenant did not dispute the Notice and continues to occupy the rental unit. The landlord submitted this application on April 06, 2022.

Analysis

Based on the landlord's undisputed and convincing testimony and the tracking number, I find the landlord served the Notice on November 25, 2021, in accordance with section 88(d) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 88 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 Notice on November 30, 2021, in accordance with section 90(a) of the Act.

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

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 it is in the approved form.

Pursuant to section 49.1(6)(a) the tenant is conclusively presumed to have accepted the end of the tenancy on January 31, 2022 and must vacate the rental unit. As this has not occurred, I find that the tenancy ended on January 31, 2022.

Pursuant to section 55(2)(b) of the Act, the landlord is entitled to an order of possession effective two days after service.

As the landlord was successful in this application, I authorize the landlord to recover the \$100.00 filing fee.

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: July 29, 2022

Residential Tenancy Branch