



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE OWNERS, STRATA PLAN EPS
226 and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPE, FFL

Introduction

This matter was convened to address an Application for Dispute Resolution made by the Landlord under Residential Tenancy Act (the Act). The Landlord seeks the following relief:

- an order of possession based on a One Month Notice to End Tenancy for End of Employment, dated March 22, 2022 (the One Month Notice); and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by KM, legal counsel, who was accompanied by two witnesses, DL and IT. The Tenant attended the hearing on his own behalf. DL, IT, and the Tenant provided affirmed testimony.

On behalf of the Landlord, KM advised that the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package by registered mail on April 29, 2022. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of these documents. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Tenant did not submit documentary evidence in response to the application.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

On behalf of the Landlord, IT testified the Tenant was employed by the Landlord as a Resident Caretaker. IT referred to a Resident Caretaker Employment Contract dated September 18, 2017 (the Agreement), a copy of which was submitted into evidence. In addition to describing the compensation and duties of employment, the Agreement confirmed the Tenant's rental unit was provided at a reduced rate of \$600.00 per month. IT testified the Landlord is unsure whether the Tenant paid a security deposit or a pet damage deposit. The Tenant agreed with respect to the terms of the tenancy.

The Agreement stated:

In accordance with Residential Tenancy Act, Section 34 it is a condition of employment that upon termination of employment the suite shall be vacated in accordance with the Residential Tenancy Act Regulations for notice, unless approval in writing is received from Strata Council to over-hold. Any over-holding of the unit shall be at market value rate.

On behalf of the Landlord, IT testified that the Tenant's employment as a Resident Caretaker was terminated effective January 15, 2022. A copy to the letter terminating the Tenant's employment was submitted in support.

IT testified the Tenant did not vacate the rental unit in accordance with the termination letter. Accordingly, the Landlord issued the One Month Notice, a copy of which was submitted into evidence. The One Month Notice is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

KM confirmed the One Month Notice was served on the Tenant by attaching a copy to the Tenant's door March 23, 2022. An Affidavit of Service dated March 28, 2022 was submitted in support.

The Tenant acknowledged receipt of the One Month Notice. He stated that he went online and completed forms but was unable to provide evidence of an application being made. The Tenant also testified that he filed a complaint with the BC Human Rights Tribunal in September 2021 and submitted that his termination was in retaliation. KM advised that the Landlord has never received notice of any such application being made.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In this case, I find the Agreement stipulates that the rental unit must be vacated upon termination of employment. I accept that the Tenant's employment as Resident Caretaker was terminated on January 15, 2022. However, the Tenant refuses to vacate the rental unit.

I find that the One Month Notice was served on the Tenant by attaching a copy to the Tenant's door on March 23, 2022. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. Therefore, I find the One Month Notice is deemed to have been received by the Tenant on March 26, 2022. I also find the One Month Notice complies with the form and content requirements of section 52 of the Act.

Pursuant to section 48(5) of the Act, the Tenant had 10 days – until April 5, 2022 – to dispute the One Month Notice by filing an application for dispute resolution. Although the Tenant testified that he went online and completed some forms, I find it is more likely than not that the Tenant did not dispute the One Month Notice. Therefore, pursuant to section 48(6) of the Act, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, which I find was April 30, 2022. The Tenant must vacate the rental unit.

I find the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenant.

Having been successful, I also find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order for \$100.00 in recovery of the filing fee. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 19, 2022

Residential Tenancy Branch