



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRIMEKORE DEPARTURE BAY HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPL-4M, FFL**

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on February 18, 2023 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a Four Month Notice to End Tenancy for Conversion of a Rental Unit dated September 23, 2022 (the "Four Month Notice"); and
- an order granting recovery of the filing fee.

The Landlord's Agent and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agent stated that they served the Tenant with the Notice of Hearing and documentary evidence by Canada Post Registered Mail on February 24, 2023. The Tenant stated that they did not receive the Notice of Hearing or evidence from the Landlord.

The Tenant stated that they received a one-page document with a settlement proposal from the Landlord. The Landlord's Agent stated that they have only sent the Tenant one Registered Mailing package which contained all documents including the Notice of Hearing and evidence.

The Landlord provided a copy of the Registered Mail tracking number along with the tracking information which confirms that the Landlord sent the Registered Mailing to the Tenant on February 24, 2023 which was collected on March 4, 2023. I note that the confirmation of receipt from Canada Post indicates:

"A name and signature have been captured for the item, but the signatory has requested that they not be displayed on our website"

The Tenant stated that they only learned about the hearing when they contacted the Tenancy Branch to complain about the Landlord. The Tenant stated that it was at this time that they were notified that the Landlord had submitted an application. I note that the file notes indicate that on February 27, 2023 an Information Officer from the RTB provided the Tenant with a courtesy copy of the Notice of Hearing, containing the Landlord's claims, and access codes to call into the hearing. The Tenant was also advised on how to submit evidence. I further note that the Tenant has not submitted any evidence in response to the Application.

I find that the Landlord has submitted sufficient evidence to demonstrate that they have served the Notice of Hearing and evidence to the Tenant by Canada Post Registered Mail on February 24, 2023, pursuant to Section 89 of the *Act*. In accordance with Section 90 of the *Act*, I find that the Tenant is deemed to have been served with these documents 5 days later, on March 1, 2023.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on Four Month Notice, pursuant to Section 49 and 55 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 1, 2015. The Tenant is required to pay rent in the amount of \$839.46 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$360.00. The Tenant continues to occupy the rental unit.

The Landlord's Agent stated that the previous caretakers retired and that the Landlord has been seeking a new caretaker at the rental property. The Landlord's Agent stated that a new caretaker has been secured and that they wish to occupy a top floor one

bedroom unit. The Landlord subsequently signed an employment agreement dated September 20, 2022 and a tenancy agreement with the new caretakers to occupy the rental unit currently being occupied by the Tenant. The Landlord submitted a copy of the employment agreement and tenancy agreement between the Landlord and the new Caretaker for the rental unit currently being occupied by the Tenant.

The Landlord's Agent stated that they served the Tenant with the Four Month Notice on September 23, 2022, by pushing it through the Tenant's mail slot attached to his door of the rental unit. The Landlord's Agent stated that the service was witnessed by a co-worker and a signed proof of service was submitted by the Landlord. The Landlord's Agent explained that the mail slot at the rental unit is one where the Tenant's mail drops directly into the Tenant's rental unit and cannot be accessed by anyone but the Tenant. The Landlord provided a copy of the Four Month Notice which is dated September 23, 2022, with an effective date of January 31, 2023. The Landlords' reason for ending the tenancy on the Four Month Notice is;

“Convert the rent unit for use by a caretaker, manager, or superintendent of the residential property.”

The Landlord's Agent stated that the new Caretaker has commenced their employment and are temporarily staying in a two bedroom unit until such a time that the Landlord gains vacant possession of the rental unit.

The Tenant responded by stating that they did not receive a copy of the Four Month Notice. The Tenant stated that there have been vacancies on similar units at the rental property. The Tenant stated that he is currently paying below market rent and he suspect the Landlord is trying to end his tenancy only to re-rent the unit for more rent. The Landlord's Agent stated that there are no current vacancies at the rental property.

Analysis

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

Section 49(6) of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to: a) demolish the rental unit; b) convert the residential property to strata lots under the Strata Property Act; c) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act; d) **convert the rental unit**

for use by a caretaker, manager or superintendent of the residential property; or
e) convert the rental unit to a non-residential use.

Section 49(8)A tenant may dispute (b)a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

Section 49(9)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b)must vacate the rental unit by that date.

The Landlord's Agent stated that she served the Tenant with the Four Month Notice on September 23, 2022 by placing the Notice through the Tenant's mail slot to his rental unit. The Landlord provided a witnessed proof of service. While the Tenant denied having received the Four Month Notice, I find that there is sufficient evidence to demonstrate that the Tenant was served with the Four Month Notice in accordance with Section 88 of the Act. Pursuant to Section 90 of the Act, I find that the Tenant is deemed served with the Four Month Notice three days later, on September 26, 2022.

According to subsection 49(8)(b) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within thirty days after the date the tenant receives the notice.

According to subsection 49(9) of the Act, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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 by that date.

In this case, the Tenant is deemed to have received the Four Month Notice on September 26, 2022. Therefore, the Tenant had until October 26, 2022 to make an Application for dispute resolution, or are conclusively presumed to have accepted the tenancy has ended on the effective date of the Four Month Notice, on January 31, 2023.

As the Tenant did not apply to dispute the Four Month Notice in accordance with Section 49(8), I find that they are conclusively presumed to have accepted the end of the tenancy according to the effective date, January 31, 2023.

I further find that the Landlord has provided sufficient evidence to demonstrate that the rental unit will be converted to a caretakers suite and that the caretaker will occupy the rental unit once vacant.

I find that the Four Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective at **1:00PM on April 30, 2023**, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Landlord and the Tenant should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

As the Landlord was successful with their Application, I find that they are entitled to recovering the \$100.00 filing fee paid to make the Application. I order the Landlord to retain \$100.00 from the Tenant's security deposit.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy based on the Four Month Notice. The Landlord is granted an order of possession effective at 1:00PM on April 30, 2023, after service on the Tenant. The order should be served to the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

As the Landlord was successful with their Application, I permit the Landlord to deduct \$100.00 from the Tenant's 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: April 06, 2023

Residential Tenancy Branch