



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MNDC, 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 the rental unit pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord A.S., the landlord's daughter E.E. and Tenant L.J. attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord's daughter E.E. (the landlord) stated that she would be speaking on behalf of her father at the hearing. Tenant L.J. (the tenant) stated that she would be representing the interests of both tenants in this matter.

The landlord testified that they personally served each tenant with the Landlord's Application for Dispute Resolution (the Application), along with all supporting evidence, on September 03, 2017. The tenant confirmed this to be true. In accordance with sections 88 and 89 of the *Act*, I find the tenants were duly served with the landlord's Application and supporting evidence.

On September 25, 2017, the landlord submitted an Amendment to an Application for Dispute Resolution (the Amendment) to the Residential Tenancy Branch to request the unpaid rent for September 2017 and October 2017. The landlord testified that the amendment was not served to the tenants and requested to withdraw the Amendment. The Amendment is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of the rental unit?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord gave undisputed affirmed testimony that this tenancy began on September 15, 2013, with a monthly rent of \$700.00, due on the first day of each month. The landlord testified they are retaining a security deposit of \$350.00 for the rental unit.

The landlord testified that a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) was personally served to the tenants on July 01, 2017, which the tenant confirmed to be true. A copy of the signed Two Month Notice, dated July 01, 2017, with an effective date of September 01, 2017, was included in the landlord's evidence. In accordance with section 88 of the *Act*, I find the Two Month Notice was duly served to the tenants.

The landlord testified that the landlord's son is going to occupy the rental unit. The landlord testified that the tenants did not dispute the Two Month Notice and are still occupying the rental unit.

The tenant testified that they have been searching for a new place to live but have not been able to find one as of the time of the hearing. The tenant confirmed that they did not submit any evidence and did not dispute the Two Month Notice.

Analysis

Section 49(3) of the *Act* establishes that a landlord may issue a Two Month Notice when the landlord or a close family member intends in good faith to occupy the rental unit.

Section 49(9) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 15 Days after the date the tenant receives the notice, 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.

Based on the undisputed evidence and sworn testimony, I find the tenant did not make an application pursuant to section 49(8) of the *Act* within 15 days of receiving the Two Month Notice. In accordance with sections 49(9) of the *Act*, the failure of the tenant to take this action within 15 days led to the end of this tenancy on September 30, 2017, the corrected effective date on the Two Month Notice, pursuant to section 53(3) of the *Act*. In this case, the tenants and anyone on the premises were required to vacate the premises by September 30, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Therefore, as the landlord has been successful in this application, I allow him to recover the filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenant(s) or anyone on the premises 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 of the *Act*, I allow the landlord to retain \$100.00 for the filing fee from the existing security deposit, which is now reduced to \$250.00.

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: October 20, 2017

Residential Tenancy Branch