



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with the landlord's application for an Order of Possession for landlord's use of the rental unit pursuant to sections 49 and 55 of the *Residential Tenancy Act* (the *Act*).

The landlord's agent (the landlord) and Tenant L.L. (the tenant) 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 testified that they personally served each tenant with the Landlord's Application for Dispute Resolution (the Application), along with all supporting evidence, on October 06, 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 Application and supporting evidence.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) was posted to the tenants' door at 7:00 p.m. on July 28, 2017. In accordance with sections 88 and 90 of the Act I find the Two Month Notice was deemed served to the tenant on July 31, 2017.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of the rental unit?

Background and Evidence

The landlord gave written evidence that this tenancy began on December 15, 2014, with a monthly rent of \$1,300.00, due on the first day of each month. The landlord testified they are retaining a security deposit of \$650.00 for the rental unit.

A copy of the signed Two Month Notice, dated July 28, 2017, with an effective date of September 30, 2017, was included in the landlord's evidence.

The landlord testified that the owner is going to occupy the rental unit. The landlord testified that the tenants did not dispute the Two Month Notice, did not pay the September 2017 rent and are still occupying the rental unit.

The landlord submitted into evidence an e-mail from the owner of the residential premises dated October 04, 2017, which states that they instructed their agent to issue the Two Month Notice on their behalf due to their intention of 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 section 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 effective date on the Two Month Notice.

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.

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.

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: November 15, 2017

Residential Tenancy Branch