



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF, O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlords' use of the rental unit pursuant to sections 49 and 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord P.W. indicated that they would be the primary speaker for the landlords.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord gave undisputed sworn testimony that they personally served each tenant with the Landlords' Application for Dispute Resolution (the Application), along with all supporting evidence, on September 28, 2017. In accordance with sections 88 and 89 of the Act, I find the tenants were duly served with the Application and supporting evidence on September 28, 2017.

The landlord gave undisputed affirmed testimony that a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) was personally served

to Tenant J.M. on August 28, 2017. In accordance with section 88 of the *Act*, I find the Two Month Notice was duly served to the tenants.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for landlords' use of the rental unit?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord gave testified that this tenancy began on November 01, 2016, with a monthly rent of \$1,275.00, due on the first day of each month. The landlord testified they continue to retain a security deposit in the amount of \$637.50.

A copy of the signed Two Month Notice, dated August 28, 2017, with an effective date of October 31, 2017, was included in the landlord's evidence.

The landlord testified that they need the rental unit for their mother. The landlord testified that the tenants are still in the rental unit, have paid for temporary use of the rental unit for November 2017 and have indicated to the landlord that they are intending on vacating the unit by November 30, 2017. The landlord is seeking an Order of Possession for November 30, 2017.

Analysis

Section 49(6) of the *Act* establishes that a landlord may issue a Two Month Notice when the landlord or a close family member intends on occupying 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 landlord's undisputed evidence and sworn testimony, I find the tenants did not make an application pursuant to section 49(8) of the *Act* within 15 days of receiving the Two Month Notice. Due to the failure of the tenants to take this action within 15 days, I find the tenants are conclusively presumed to have accepted the end of this

tenancy on October 31, 2017, the effective date on the Two Month Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by October 31, 2017. As this has not occurred and as the landlords accepted money for the temporary use of this rental unit for November 2017, I find that the landlord is entitled to an Order of Possession for November 30, 2017.

Therefore, as the landlords have been successful in this application, I allow them to recover the filing fee from the tenants.

Although the landlords' application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **on November 30, 2017, after service of this Order** on the tenant. Should the tenant 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 landlords to retain \$100.00 for the filing fee from the existing security deposit, which is now reduced to \$537.50.

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 27, 2017

Residential Tenancy Branch