



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPL

Introduction

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

- an order of possession based on a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord appeared at the hearing. The landlord was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord explained that a 2 Month Notice was given to the tenants in person on September 15, 2017. Pursuant to sections 88 & 90, the tenants are deemed served with this notice, the same day as its service. The landlord continued by noting that he served the tenants, again in person, with his application for dispute resolution on December 5, 2017. Pursuant to sections 89 & 90 of the *Act*, I find that the tenants were deemed served with this application for dispute on December 5, 2017.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

Undisputed testimony was presented at the hearing that this tenancy began in September 2017. Rent is \$1,400.00 per month, and a security deposit of \$700.00 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord said that he occupies the top floor of the home with his wife and children. In November 2017 his uncle, aunt and their three children arrived to Canada from India. The landlord explained that he was seeking an Order of Possession for the rental unit because he would like his uncle, aunt and their children to occupy the basement.

On September 15, 2017, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The reason cited on the notice was listed as being, "the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

At the hearing, the landlord confirmed that his uncle, aunt and their three children would be occupying the basement and he would continue to occupy the main floor of the home with his family.

Analysis

The tenants did not dispute the notice or appear at the hearing. Section 49(9) of the *Act* states, "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."

While oral testimony was presented at the hearing by the landlord that the basement suite was to be used by family members who would not fall within the definition of section 49(1) of "close family members," I find that the 2 Month Notice was valid pursuant to section 52 of the *Act*. This section states;

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The tenants had ample opportunity to dispute the notice and to attend the hearing. I find that their failure to do either has led to the end of the tenancy on the effective date of the notice, in this case, November 30, 2017. As the tenants continue to occupy the

rental unit, the landlord will be given a 2 Day Order of Possession which must be served on the tenants.

Pursuant to section 72 of the *Act*, the landlord may recover the \$100.00 filing fee for his application. In lieu of a monetary award, I allow the landlord to withhold \$100.00 from the tenants' security deposit.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord may withhold \$100.00 from the tenants' security deposit in full satisfaction for a return of 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: February 19, 2018

Residential Tenancy Branch