



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL, FFL

Introduction

On February 12, 2018, the Landlord applied for a dispute resolution proceeding seeking the following under the Act, regulation, or tenancy agreement:

- An Order of Possession for Landlord's Use of Property; and
- To recover the filing fee.

At the start of the hearing, I confirmed that W.W. appeared to represent himself as the Landlord and that C.B. appeared to represent herself as the Tenant. Both parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. The Landlord and Tenant provided a solemn affirmation.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified that as per the written tenancy agreement, the tenancy started on April 1, 2014 for a fixed length of time of one year, that rent was \$1,100.00 per month due on the first day of each month, and that a security deposit of \$550.00 was also paid.

The Landlord confirmed that a Two Month Notice for Landlord's Use of Property was served by hand to the Tenant on November 30, 2017, indicating an effective end date of tenancy of February 1, 2018. The purpose indicated on the notice was that "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)". The Landlord stated that his daughter, grand-daughter, and mother-in-law would be moving into the rental unit. He also submitted that the Tenant texted his wife on January 31, 2018 stating that she was unable to move out by the effective date of the notice and subsequently electronically transferred rent for February 2018. He then stated that he contacted the Residential Tenancy Branch and was advised to accept the payment "for use and occupancy" and document this in a letter to the Tenant. The Landlord referred to his written evidence of the letter, dated February 1, 2018 that was signed by the Tenant confirming that \$1,100.00 was accepted for "for use and occupancy", that the tenancy was not re-instated, and that she must move out by the effective date of the notice.

The Landlord stated that due to the Tenant overholding in the rental unit, he had to rent a storage space for his daughter's belongings and that he applied for dispute resolution seeking relief. He also stated that seven text messages were sent to the Tenant, between the months of February and into April, advising her to vacate the rental unit as per the notice; however, she indicated that she was unable to do so. The Landlord also requested that he was seeking monetary compensation for prior outstanding debts.

The Tenant acknowledged that she was served the Two Month Notice for Landlord's Use of Property by hand on November 30, 2017 and that she did not dispute this notice. She advised that she was doing everything she could to find a home for herself and her children but the current rental conditions make it difficult for her. However, she is doing everything in her power to move.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant sections of the Act that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

Section 49 of the Act entitles the Landlord to end a tenancy for the purpose of having the Landlord or a close family member of the Landlord occupy the rental unit. The Landlord must serve the proper notice to end the tenancy in this manner and once received, the Tenant has 15 days to dispute the notice. Otherwise, it is conclusively presumed to be accepted that the tenancy ends on the effective date of the notice, and the rental unit must be vacant by that date.

Once this notice is received, Section 51 of the Act entitles the Tenant to receive from the Landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement, and the Tenant may withhold this amount from the last month's rent.

Sections 55 and 57 allow a Landlord to apply for an Order of Possession once the 15-day dispute period has elapsed, or if the tenant overholds and continues to occupy the rental unit after the effective date of the notice.

When examining the consistent and undisputed evidence, I note that the Tenant was served the Two Month Notice for Landlord's Use of Property by hand on November 30, 2017, with an effective end date of tenancy of February 1, 2018. The reason for the issuance of this notice was due to the Landlord wanting the rental unit for his daughter, grand-daughter, and mother-in-law. While the Landlord stated that he could not find his copy of the notice that he served, the Tenant acknowledged that she received this notice and confirmed the details of it as per the Landlord's testimony. As such, I am satisfied that the Landlord served by hand a valid Two Month Notice for Landlord's Use of Property upon the Tenant on November 30, 2017, and that the parties agree to this point.

This valid notice was not disputed by the Tenant within the 15-day timeframe pursuant to Section 49 of the Act; therefore, she was conclusively presumed to have accepted the end of tenancy on the effective date of the notice, as set out above. As the Tenant failed to vacate the rental unit on the effective date of the notice, the Landlord filed an application for dispute resolution seeking an Order of Possession of the rental unit.

I confirmed with the Landlord that he still required vacant possession of the rental unit. I also acknowledged the Tenant's difficulties finding another rental unit; however, I advised her that as per the Landlord's notice, and in the absence of any action taken to dispute the notice, she was required to vacate the rental unit. The Landlord confirmed that he had received payment for February and March 2018, but had not received payment for April 2018. As the Tenant was entitled to withhold the last month's rent under Section 51 of the Act, I confirmed with the Landlord that not receiving payment for April would be considered the Tenant's right to withhold one month of rent under this section, and he agreed. I also confirmed that as such, the Tenant would stay in the rental unit, but vacate the premises not later than 1:00 PM on April 30, 2018, to which he concurred. I then clarified with the Tenant her understanding of the conditions, the significance of the Order of Possession, and her requirement to vacate the rental unit at 1:00 PM on April 30, 2018, which she indicated she understood.

Therefore, I find the Two Month Notice is valid and I grant the Landlord an Order of Possession effective at 1:00 PM on April 30, 2018.

Furthermore, as the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

In addition, the Landlord felt that he might be owed compensation from the Tenant for her not complying with the Act. However, as the Landlord did not apply for monetary compensation for losses in this application, he must make another application.

Conclusion

I grant an Order of Possession to the Landlord effective as of 1:00 PM on April 30, 2018. Should the Tenant 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 grant the Landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 24, 2018

Residential Tenancy Branch