



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlords requesting an Order for Possession on the basis of a Two Month Notice to End Tenancy for Landlord’s Use dated March 31, 2018.

The Landlords appeared for the scheduled hearing. The Tenant did not appear for the hearing, although I left the teleconference line open for 10 minutes past the scheduled hearing time; the conference lines were working and I confirmed that the Landlords and I were the only ones on the call. I find that the notice of hearing was properly served and that evidence was submitted and delivered properly. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The participants were given a full opportunity to present affirmed evidence and to make submissions.

The Landlords advised that it appeared as though the Tenant may be vacating the premises as some of her belongings were being removed, although this was not confirmed. They decided to proceed with their Application.

Issue to be Decided

Are the Landlords entitled to an Order of Possession, pursuant to section 55 of the Residential Tenancy Act (“Act”)?

Background and Evidence

This tenancy began March 1, 2016 for agreed monthly rent of \$750.00 per month; a security deposit of \$375.00 was paid. The tenancy agreement was submitted into evidence and shows other named individuals as the landlords. The Applicants explained that they purchased the

home in August 2016, shortly after the tenancy began. The new Landlords live upstairs, and two of the family members want to move to the basement due to family conflict, to have their own private living quarters.

The Landlords delivered a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2018 by posting it on the Tenant's door that same day. The effective date of the notice was June 1, 2018. The reason given in the notice was that a close family member of the Landlord was intending to occupy the premises. A copy of the notice and proof of service was submitted into evidence.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. Although the Tenant has not attended the hearing, I determined it was reasonable to proceed with the Application.

The Two Month Notice to End Tenancy meets the requirements for form and content as provided for in section 52 of the Act. I find that the notice was properly served and that the Tenant did not dispute the notice within the required 15 days and accordingly, I find that she has accepted that notice to end the tenancy.

Under section 49(3) of the Act, a landlord may end a tenancy by providing two month's notice if a close family member or landlord intends to reside in the rental premises. I find that the Landlords have confirmed that immediate family will be residing in the basement suite and that they intend to move to that suite once the Tenant vacates the premises.

Under section 90 of the Act, service is effective the third day after posting the notice on the Tenant's door. I find that this Tenant was deemed served on April 3, 2018; the June 1st stated effective date of the notice is no longer in compliance with the Act. As the notice was technically deemed received in the month of April, section 53 of the Act requires that the effective date is deemed to be the earliest date which complies with the Act:

Incorrect effective dates automatically changed

53 (1) *If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.*

(2) *If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.*

(3) In the case of a notice to end a tenancy, ... if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

Accordingly, I find that the corrected effective date of the Two Month Notice is June 30, 2018. As the Landlords have proven their claim, the Landlords are entitled to an Order of Possession effective June 30, 2018.

Conclusion

I grant an Order of Possession to the landlord effective **June 30, 2018** on the Tenant. 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.

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: June 18, 2018

Residential Tenancy Branch