



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession based on an undisputed Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant stated that he did not submit any documentary evidence for consideration at the hearing and acknowledged receipt of the Application, the Notice of Hearing, and the Amendment.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing and mailed to the mailing address listed in the Application.

Preliminary Matters

Preliminary Matter #1

In hearing the Tenant acknowledged receipt of the Landlords documentary evidence with the exception of a written tenancy agreement which he states he has never received and must be fraudulent as only a verbal tenancy agreement exists. In the hearing I received testimony from the parties regarding the details of the tenancy

agreement. As the Tenant has disputed the validity and receipt of the written tenancy agreement, I have therefore excluded it from consideration in this matter.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

Although the parties disagreed about whether the tenancy was a one-year fixed-term or month to month, they agreed that the tenancy started on March 1, 2018, that rent in the amount of \$850.00 is due on the first day of each month and that a security deposit in the amount of \$425.00 was paid at the start of the tenancy. The Tenant stated that he never would have moved without a fixed-term tenancy agreement and that the end date "would have probably been March 1, 2019". Although the Landlord agreed that the Tenant had requested a fixed-term, she stated that no fixed term was ever agreed to and that ultimately the Tenant accepted the tenancy on a month to month basis. Neither party submitted documentary evidence which was accepted for my consideration in support of their testimony.

The Landlord testified that on June 3, 2018, a Two Month Notice was personally served on the Tenant and the Tenant confirmed receipt on that date. The Two Month Notice in the documentary evidence before me dated June 1, 2018, is signed by the Landlord, contains the address of the rental unit, has an effective vacancy date of September 30, 2018, and states that the reason for ending the tenancy is because the Landlord or their close family member intends in good faith to occupy the rental unit.

Although the Tenant stated that he was unable to file an Application for Dispute Resolution seeking cancellation of the Two Month Notice due to his health conditions, his lack of funds for the filing fee, and his inability to obtain documents for a fee waiver; ultimately he acknowledged that he did not dispute the Two Month Notice received by him on June 3, 2018, and admitted that he has not paid any rent for October 2018. Despite the foregoing, the Tenant argued that the Two Month Notice should still be cancelled as he currently has a fixed-term tenancy agreement.

As the Tenant has not paid rent for October and did not dispute the Two Month Notice, the Landlord therefore sought an Order of Possession for the rental unit.

Analysis

I accept the Testimony of both parties that the Two Month Notice was personally served on and received by the Tenant on June 3, 2018.

Section 49(9) of the *Act* states that if a tenant who has received a Two Month Notice does not make an application for dispute resolution within 15 days after the date the tenant receives the notice, 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.

Although the Tenant argued in the hearing that the Two Month Notice is not valid, he acknowledged that he did not file an Application for Dispute Resolution seeking to dispute the Two Month Notice. I therefore find that the Tenant's opportunity to dispute the validity of the Two Month Notice, including the effective date of the Two Month Notice, was extinguished when he failed to file an Application for Dispute Resolution with regards to the Two Month Notice as required under section 49(8) of the *Act*. As a result, I find that the Tenant is conclusively presumed under section 49(9) of the *Act* to have accepted the Two Month Notice and was therefore required to move out in compliance with it.

As a result of the above, I find that the Tenant is currently overholding the rental unit and that the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the *Act*. As the parties agreed that rent for October has not been paid, the Order of Possession will therefore be effective two days after service on the Tenant.

I also find that the Landlord is entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*, which they are authorized to retain from the Tenant's security deposit as per their request to do so.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia 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: October 26, 2018

Residential Tenancy Branch