



Dispute Resolution Services

Page: 1

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 for Landlord's Use of Property, pursuant to sections 49 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord gave sworn testimony that the tenant was served notice of this hearing in the presence of a witness on December 21, 2018. Based on the submissions of the landlord, I find the tenant was duly served notice of this proceeding pursuant to section 89 of the *Act*. Therefore, I continued in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord gave the **following undisputed testimony**. The tenancy began on October 15, 2017 with a monthly rent of \$1000.00. At the outset of the tenancy the tenant paid a security deposit of \$500.00. The landlord testified that on October 10, 2018 she issued a Two Month Notice to End Tenancy for Landlords Use of Property

with an effective date of December 31, 2018 to the tenant in the presence of a witness. The landlord testified that the notice was given for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The landlord testified that she along with her sister will be taking care of an ailing parent and will need the entire house. The landlord testified that the tenant has not yet moved out but has agreed to leave the home on February 1, 2019. The landlord testified that the tenant was given "free rent" for the month of December and that the tenant has paid January's rent in full for use and occupancy only and that the tenancy has not been reinstated. The landlord testified that she and the tenant agreed that she could request the order of possession to reflect that agreement.

Analysis

Section 49(5) and section 49(6) state 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.

In this case, the tenant did not dispute the Two Month Notice within 15 days of receiving it. The tenant had 15 days from the receipt of the Two Month Notice to file with the RTB to dispute the Two Month Notice. I find that, pursuant to section 49 of the *Act*, the tenant's failure to file to dispute the Two Month Notice within 15 days of receiving the Two Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this requires the tenant to vacate the premises by December 31, 2018. I find that the landlord is entitled to an Order of Possession effective February 1, 2019 as per her own request and the agreement she and the tenant have reached. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by February 1, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord advised that she is waiving her request for the filing fee, accordingly; I dismiss that portion of her application.

Conclusion

The Two Month Notice to End Tenancy for Landlords' Use of Property dated October 10, 2018 is confirmed, it is of full effect and force, the tenancy is terminated.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on February 1, 2019**, which should be served 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: January 14, 2019

Residential Tenancy Branch