



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPL, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on May 8, 2019, (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for landlord use of the property; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlords' Agent K.G. attended the hearing at the appointed date and time, and provided affirmed testimony.

K.G. testified that she served the Landlords' Application and documentary evidence package to the Tenants in person on May 12, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the Act?
2. Are the Landlords entitled to an order of possession based on a Two Month Notice for Landlord's Use of the Property (the "Two Month Notice") dated December 31, 2018, pursuant to Section 49 and 55 of the Act?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2012. The Tenant is required to pay rent in the amount of \$750.00 which is due to the Landlord on the first day of each month. The Tenant was not required to pay a security deposit.

K.B. testified that the owners of the rental unit are seeking to move into the rental unit, which requires the Tenants to move out of the rental unit.

K.B. testified that she served the Tenants in person with the Two Month Notice on January 1, 2019, with an effective vacancy date of March 2, 2019. The Landlords' reason for ending the tenancy on the Two Month Notice is;

"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 Tenant confirmed having received the Two Month Notice on January 1, 2019. The Tenant confirmed that he continues to occupy the rental unit and has not disputed the Two Month Notice. The Tenant stated that he and his wife have been unable to find another residence to move to.

K.B. is also claiming for monetary compensation relating to unpaid rent in the amount of \$2,100.00. K.B. stated that the Landlords did not collect rent from the Tenants in February 2019 as part of the compensation in accordance with the Two Month Notice. K.B. stated that the Landlord assumed that the Tenants would vacate the rental unit on the effective date of the Two Month Notice. K.B. stated that the Tenants have not moved out and continued to offer the rent to the Landlords for March, April, May and

June 2019. K.B. stated that the Landlords have not accepted the rent from the Tenants as they do not wish to continue the tenancy. K.B. stated that the Landlords were hopeful that the Tenants would be able to save enough money to find another residence.

K.B. stated that the Landlords have now suffered a financial loss as a result and want to recover \$2,100.00 to cover the utility bills that have accumulated since February 2019. The Tenant stated that he doesn't feel as though the utilities would amount to \$2,100.00. Furthermore, the Tenant indicated that the utilities are included in his rent that the Landlords have not been accepting.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. K.B. stated that the owners intend on occupying the rental unit, therefore require vacant possession of the rental unit.

K.B. stated that she served the Tenants in person with the Two Month Notice on January 1, 2019, with an effective vacancy date of March 2, 2019. Section 53 of the Act allows for incorrect effective dates to autocorrect. Therefore, I find that the corrected effective date of the Two Month Notice to be March 31, 2019. The Tenant confirmed having received the notice on January 1, 2019. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

According to subsection 49(9) of the Act, 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.

In this case, the Tenant testified that he received the Two Month Notice on January 1, 2019. Therefore, the Tenants had until January 16, 2019 to make an Application for dispute resolution, or are conclusively presumed to have accepted the tenancy has ended on the effective date of the Two Month Notice.

As the Tenant did not apply to dispute the Two Month Notice in accordance with Section 49(8), I find that they are conclusively presumed to have accepted the end of the tenancy according to the corrected effective date, March 31, 2019.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

The Landlords and the Tenants should be aware that if the Landlords fail to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

The Landlords are also seeking a monetary order in the amount of \$2,100.00 in unpaid rent to help cover the utility costs. K.B. stated that the Landlord did not collect rent from the Tenants in February 2019 as part of the compensation in accordance with the Two Month Notice. K.B. stated that the Tenants have not moved out as required according to the Two Month Notice, and continued to offer the rent to the Landlords for March, April, May and June 2019. K.B. stated that the Landlords have not accepted the rent from the Tenants as they do not wish to continue the tenancy. K.B. stated that the Landlords were hopeful that the Tenants would be able to save enough money to find another residence.

Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act. In this case, I find that the Landlord's continued action of not accepting rent from the Tenants in March, April, May and June 2019 bars them for claiming for the unpaid rent after the fact. As such, I dismiss the Landlords' claim for a monetary order relating to unpaid rent.

Despite the fact that the Landlords have been granted an order of possession effective 2 (two) days after service on the Tenants, the Tenants are now on notice that failure to pay any future rent may result in the Landlord making a future claim for unpaid rent for use and occupancy.

As the Landlords were partially successful with their Application, I find that they are entitled to recovering the \$100.00 filing fee paid to make the Application. Pursuant to

section 67 and 72 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$100.00.

Conclusion

The Tenants have breached the Act by not complying with the Two Month Notice. The Landlords are granted an order of possession effective 2 (two) days, after service on the Tenants. The order should be served to the Tenants as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

As the Landlords were partially successful with their Application, I grant the Landlords a Monetary Order for \$100.00. In the event that the Tenants do not comply with this Order, it may be filed with the Province of British Columbia Small Claims 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: June 21, 2019

Residential Tenancy Branch