



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WR 15989 GT Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession, further to having served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use dated September 28, 2019 ("Two Month Notice").

The Tenants, an agent for the Landlord, L.C. ("Agent"), and two advocates for the Landlord, J.G. and A.G. ("Advocates"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Advocate for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement and the Two Month Notice. The Advocate advised me that the wrong corporate name was erroneously put on the Application; therefore, I amended the Applicant's name in the Application, pursuant to section 64(3)(c) and Rule 4.2 to reflect the correct name of the Landlord in this matter.

When reviewing the service of the Application, Notice of Hearing, and documentary evidence between the Parties, the Agent said that the Application, Notice of Hearing and a copy of the proof of service for the Two Month Notice were served on the Tenants via registered mail on October 28, 2019; however, she advised that this package was unclaimed by the Tenants. According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Landlord served the Notice of Hearing package on the Tenants on November 2, 2019. The Advocates said that another registered mail package with the evidentiary documents was sent to the Tenants and delivered on November 12, 2019. The Tenants acknowledged having received this package.

The Tenants said that they attempted to hand deliver their documentary evidence to the Agent on December 5, 2019, but that the Agent was unavailable; therefore, the Tenants sent the package to the Landlord via registered mail on December 5, 2019. The Advocates acknowledged receipt of this package. Based on the evidence before me overall, I find that the Parties were served with the necessary hearing and evidentiary documents pursuant to the Act.

The Parties engaged in settlement discussions during the hearing; however, 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 me by the Director of RTB under section 9.1(1) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the tenancy began on July 1, 2019, with a monthly rent of \$2,200.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,100.00, and a pet damage deposit of \$1,100.00.

The Parties disagreed as to whether the tenancy agreement set out a fixed or periodic tenancy between the Parties. The Tenant, E.E., said he would never have signed anything other than a fixed term tenancy agreement; however, the tenancy agreement before me has the Parties' signatures at the end, and indicates that the tenancy created by this agreement started on July 1, 2019. It then has a digital check mark

beside the following:

☒ and continues on a month-to-month basis until ended in accordance with the Act

The Tenant, K.M., said in a written submission that the Landlord did not provide the Tenants with a copy of the tenancy agreement until after the Landlord served the Tenants with the Two Month Notice. K.M. said that she was surprised to see the above noted check mark in the box, which states that it was a month-to-month tenancy. K.M. said:

I have no hard proof to dispute this except our word. As a Certified Financial Planner employed at [a bank], I uphold myself to a very high standard of conduct and practice & I give you our word that was our understanding. We think the landlord is acting unfairly and being dishonest to say the agreement was month-to-month. In E.E.'s condition we never would have agreed to a month to month arrangement and put him at risk of additional stress medically & financially to move again so quickly.

The Tenant, K.M., confirmed that the Agent served the Tenant, E.E., with the Two Month Notice in person on September 28, 2019. On reviewing the Two Month Notice submitted into evidence by the Landlord, I note it was signed and dated on September 28, 2019, it has the rental unit address, it was served in person on September 28, 2019, the vacancy effective date is set out as December 1, 2019, and the ground for the eviction is that the Landlord is a family corporation and a person owing voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Tenants testified that the Landlord was trying to sell all of the units in the residential property, including the rental unit. E.E. said that after the Two Month Notice was served, "...they continued to show the place. So, if he wants it for his personal house, why are they showing it? One weekend five people when through here."

The Advocate said:

Initially, all of the units were for sale. When the owner received a firm offer on the second to last unit, then they made a decision that they were going to retain [the rental unit]. They left that option open to them.

The Tenants said that all they want is more time before having to leave the rental unit. They said that E.E.'s health is weak, that he has a heart procedure scheduled for some time in January 2020, and that his doctor said he should not move until after that procedure, in addition to having additional time to recover.

The Tenants submitted a doctor's note dated November 25, 2019, about E.E., stating:

Pt will need more cardiac testing and thus it will be not possible to move.

Signed
[Dr. J.Y.]

The Advocates consulted the owners of the rental unit, who said they were ready to move in on December 1, 2019, pursuant to the Two Month Notice. As noted above, the Parties in the hearing discussed the possibility of settling on a different vacancy date; however, they were not able to agree on settlement terms, and left it for me to decide the matter according to the legislation.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I accept the undisputed evidence before me that the Landlord served the Tenant, E.E., with the Two Month Notice in person on September 28, 2019. While I appreciate the Tenants' difficult situation, the Tenants did not apply to dispute the Two Month Notice on any basis.

Section 49(9) of the Act states that if a tenant who has received a Two Month Notice does not apply 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 Tenants argued in the hearing that the Two Month Notice is not valid, they acknowledged that they did not apply for dispute resolution, seeking to cancel the Two Month Notice. I therefore find that the Tenants' opportunity to dispute the validity of the Two Month Notice, including the effective date of the Two Month Notice, was extinguished when they failed to apply for dispute resolution in this regard, as required under section 49(8) of the Act.

As a result, I find that the Tenants are conclusively presumed under section 49(9) of the Act to have accepted the Two Month Notice, and were, therefore, required to move out in compliance with it. Accordingly, I find that the Tenants are currently overholding the rental unit, and therefore, that the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the Parties agreed that rent for December 2019 was paid, the Order of Possession will, therefore, be effective on December 31, 2019, at 1:00 p.m.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective December 31, 2019 at 1:00 p.m. **after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 final and binding on the Parties, unless otherwise provided under the Act, and 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: December 16, 2019

Residential Tenancy Branch