



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

On April 24, 2020, the Landlord submitted an Application for Dispute Resolution requesting an order of possession based on issuance of a Two Month Notice to End Tenancy for Landlord Use of Property ("the Two Month Notice").

The matter was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The Landlord was assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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 to be Decided

- Is the Landlord entitled to an order of possession for the residential property?

Background and Evidence

The Tenant and Landlord provided testimony that the tenancy began on January 12, 2013, on a month to month basis. Rent in the amount of \$1,000.00 was to be paid on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$500.00.

The Landlord / applicant who attended the hearing purchased the home. The Landlord informed the seller that he intends to occupy the rental unit and asked that a notice to end tenancy be issued to the Tenant.

The original Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlords Use of Property dated January 31, 2020. The effective date shown on the Two Month Notice is April 1, 2020. The Landlord testified that the Two Month Notice was served to the Tenant in person on January 31, 2020.

The reason for ending the tenancy in the Notice is:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord in writing, to give this Notice because the purchaser or a close family member intends to in good faith to occupy the rental unit.

The Two Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: "This is a legal notice that could lead to you being evicted from your home." The Notice also informs the Tenant of the right to dispute the Notice within 15 days after receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within the required timeframe, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit on the effective date of the Notice.

The Tenant testified that she received the Two Month Notice on January 31, 2020.

The Tenant testified that she is no longer living in the rental unit. She testified that she moved out of the unit on June 1, 2020. The tenant testified that she did not dispute the Two month notice and was not able to move out of the rental unit due to the Covid pandemic.

The Landlord's counsel requested an order of possession as they have not verified that the Tenant has vacated the unit.

The Tenant stated she has no concern with the Landlord receiving an order of possession.

Analysis

Pursuant to section 49 (6) of the Act, if a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the notice.

Under section 55 (2)(b) of the Act, if the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

Based on the above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

The Tenant received the Two Month Notice on January 31, 2020 and did not dispute the Notice. Pursuant to section 49 (6) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenancy has ended.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant did not move out of the rental unit by the effective date of the Two Month Notice, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant the Landlord a monetary order in the amount of \$100.00.

Conclusion

The Landlord's request for an order of possession based on the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 31, 2020, is granted.

The Tenant received the Two Month Notice and did not dispute the Notice or move out by the effective date of the Notice.

I grant the Landlord an order of possession under section 55 of the Act effective two (2) days after service on the Tenant. For enforcement, the Tenant must be served with the order of possession.

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order provides that a Landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the Act.

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 04, 2020

Residential Tenancy Branch