



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S, MNRL-S, OPL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- Order of Possession for Landlord's Use pursuant to section 55;
- a monetary order for unpaid rent or monetary losses pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord and their agent attended the hearing by way of conference call, the tenants did not. I waited until 10:00 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlord and their agent were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, their agent, and I were the only ones who had called into this teleconference.

The landlord gave sworn testimony that on June 8, 2020, the landlord's Application for Dispute Resolution hearing package and evidence were sent to the tenants by way of registered mail. The landlord provided a tracking numbers in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenants deemed served with the landlord's application and evidence on June 13, 2020, five days after mailing. The tenants did not submit any written evidence for this hearing.

The landlord provided undisputed testimony that the tenants were served with the landlord's 2 Month Notice dated March 19, 2020, on March 20, 2020 by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 2 Month Notice on March 25, 2020, 5 days after mailing.

During the hearing, the landlord confirmed that as the tenants have yet to move out, the landlord was unable to confirm the total monetary losses associated with the tenants' failure to move out by the effective date of the 2 Month Notice. Accordingly, the landlord's entire monetary claim for losses was withdrawn. This portion of the landlord's application was not considered, and the landlord has leave to reapply. Liberty to reapply is not an extension of any applicable limitation periods.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to monetary compensation for unpaid rent or money owed?

Is the landlord entitled to recover the filing fee?

Background and Evidence

This month-to-month tenancy began on June 15, 2019, with monthly rent currently set at \$2,600.00. The landlord testified that the original agreement was for the tenants to pay the rent in 2 bi-annual installments, on June 15, 2019 and December 15, 2019. The landlord testified that the agreement was changed to allow the tenants to pay every two months instead, on the 15th day of the month. The tenants paid a security deposit in the amount of \$1,300.00, which the landlord still holds.

The landlord issued the tenants a 2 Month Notice for landlord's use on March 20, 2020, as the landlord had to relocate for employment purposes. The landlord testified that she has had to find alternative housing as a result of the tenants' failure to move out. The landlord provided evidentiary materials to support why she had to issue this 2 Month Notice.

As the tenants have not moved out by the effective date of the 2 Month Notice, nor dispute the 2 Month Notice, the landlord is requesting an Order of Possession as the effective date of May 31, 2020 has passed.

The landlord is also seeking a monetary order for unpaid rent as the tenants have only paid rent for the period of April 15 to May 14, 2020. The landlord is seeking a monetary order for the unpaid rent for the period of May 15, 2020 to June 14, 2020, and rent for the period of June 15, 2020 to July 1, 2020 in the amount of \$3,900.00. The landlord feels that the tenants are not entitled to one months' rent in compensation as the tenants have not moved out by the effective date of the 2 Month Notice.

Analysis

A copy of the 2 Month Notice was submitted by the landlord for this hearing, and I find that the landlord's 2 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 49 of the *Act* provides that upon receipt of a 2 Month Notice, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the 15 days of service granted under section 49(8)(a) of the *Act*. Accordingly, I find that the tenants conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the 2 Month Notice, May 31, 2020.

In this case, this required the tenants and anyone on the premises to vacate the premises by May 31, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

Section 49 of the *Act* states that a tenant who receives a 2 Month Notice for Landlord's Use is are entitled to receive the equivalent of one month's rent as compensation.

This is clarified in Policy Guideline 50 below:

B. COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE

Section 51(1) of the RTA and section 44(1) of the MHPTA require a landlord who gives notice to end a tenancy for landlord's use to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a notice to end tenancy for landlord's use under section 49, that complies with the requirements set forth in Section 52 [*form and content*] is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Despite the fact that the tenants have not moved out, I find that the landlord has ended this tenancy on the basis of a 2 Month Notice by serving the tenants with this Notice. As

the landlord has been granted an Order of Possession on the basis of this 2 Month Notice, I find that the tenants are entitled to the equivalent of the month's rent.

I find that the tenants are entitled to compensation in the equivalent of \$2,600.00. As the tenants have paid rent up to the period of May 14, 2020, I find that the tenants have the right to withhold their monthly rent for the period of May 15, 2020 to June 14, 2020 in compensation for the 2 Month Notice. I accept the landlord's testimony that the tenants have not moved out, nor have they paid rent for the period of June 15, 2020 to June 30, 2020. Accordingly, I allow the landlord's monetary claim of unpaid rent for the period of June 15, 2020 to June 30, 2020 in the amount of \$1,300.00.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I find that the landlord is entitled to an Order of Possession.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenants. Should the tenants and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord's monetary claim of \$1,300.00 in unpaid rent for the period of June 15, 2020 to June 30, 2020. I allow the landlord to retain the tenants' security deposit in satisfaction of this monetary claim.

I issue a Monetary Order in the amount of \$100.00 in the landlord's favour for recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's entire monetary claim for losses was withdrawn. This portion of the landlord's application was not considered, and the landlord has leave to reapply. Liberty to reapply is not an extension of any applicable limitation periods.

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 30, 2020

Residential Tenancy Branch