



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for landlord's use of the property based on the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 55.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord provided undisputed sworn testimony and written evidence that they sent the tenant the 2 Month Notice by registered mail at the address of the rental unit on June 25, 2020. The landlord provided copies of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. The landlord also gave undisputed sworn testimony and written evidence that they placed a copy of the 2 Month Notice in the mailbox of this rental unit on June 25, 2020. The tenant maintained that they did not receive the 2 Month Notice until July 23, 2020, as they seldom check the contents of their shared mailbox, and do not routinely check for mail sent to them at the rental unit, as they receive their personal mail at a mailbox in another community. The tenant did not dispute the landlord's testimony that the tenant never provided them with any mailing address other than the mailing address for the rental unit during this tenancy. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed to have received the 2 Month Notice on June 30, 2020, the fifth day after it was sent to them by registered mail and also placed in their mailbox by the landlord.

As the tenant confirmed that they received copies of the landlord's dispute resolution hearing package and written evidence on July 23, 2020, I find that the tenant was duly served with this material in accordance with sections 88 and 89 of the *Act* by that date.

Since the landlord confirmed that they had received copies of the tenant's written evidence, I find that the tenant's written evidence was served in accordance with section 88 of the *Act*.

At the hearing, the tenant confirmed that they have not filed an application with the Residential Tenancy Branch to cancel the landlord's 2 Month Notice.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of the property?

Background and Evidence

On December 6 and 9, 2019, the parties signed a month-to-month Residential Tenancy Agreement that enabled the tenant to take up occupancy of the rental unit on December 15, 2019. Monthly rent is set at \$1,800.00, payable on two set dates each month. The tenant is responsible for hydro. The landlord continues to hold the tenant's \$900.00 security deposit.

The tenant testified that they have withheld payments of \$900.00 for each of July and August 2020, after having received the 2 Month Notice from the landlord. The tenant said that their withholding of these payments has been done in accordance with the provisions of the *Act* that entitle a tenant receiving a 2 Month Notice to be credited for a full month's rent at the end of their tenancy.

The landlord's 2 Month Notice, entered into written evidence by the landlord, identified the following reason for seeking an end to this tenancy:

- *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...*

At the hearing, the landlord confirmed that they do intend to move into the rental unit in early September, as the rental suite they are currently renting has been rented by the owners of that property to other tenants as of September 3, 2020. The landlord said that they have nowhere else to live as of September 2020, and need a location such as the one currently occupied by the tenant for the landlord's horses.

Analysis

Section 49(8) of the *Act* provides that upon receipt of a 2 Month Notice the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within fifteen days of having been deemed to have been served with the landlord's 2 Month Notice. I also note that even after receiving the 2 Month Notice on July 23, 2020, the tenant has not filed any application to cancel the 2 Month Notice, a requirement clearly stated at the top of the 2 Month Notice.

Section 49(7) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlord's 2 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49 (9) of the *Act* to have accepted that the tenancy ends on the effective date of the 2 Month Notice, August 31, 2020.

Conclusion

I allow the landlord's application. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on August 31, 2020. 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: August 24, 2020

Residential Tenancy Branch