



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 a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to obtain an order of possession based on an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 1, 2020 (2 Month Notice).

An agent for the landlord AH (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding document dated July 21, 2020 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service with a witness on July 22, 2020. The landlord submitted a Proof of Service document which supports the testimony of the agent that the tenants were both personally served on July 22, 2020 in person at the rental unit, which was witnessed by CL. Given the above, I find the tenants were sufficiently served under the Act and that this matter is unopposed by the tenants.

Preliminary and Procedural Matters

The agent confirmed the email addresses during the hearing and clarified that two of the named landlords are agents, while the father of the agent is the only landlord listed on the tenancy agreement submitted in evidence. As a result, pursuant to section 64(3)(c)

of the Act, I amend the landlord's application to reflect one landlord and two agents for the landlord.

In addition, the agent confirmed that they are not aware of an email address for the tenants. The agent was advised that the decision and any related orders will be emailed to the landlord and that the decision will be sent by regular mail to the tenants. The agent also confirmed that the landlord was not seeking the filing fee as part of their application.

Issue to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 2 Month Notice?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 1, 2015. Originally monthly rent was \$750.00 per month and was increased over the duration of the tenancy and is currently \$900.00 per month according to the agent. The agent testified that the tenant paid a security deposit of \$350.00 at the start of the tenancy.

The agent confirmed service of the 2 Month Notice by their father, the landlord, on the tenants via personal service at the rental unit on July 1, 2020 at 3:00 p.m., which the agent stated they witnessed. Based on the above, the agent was advised that I was satisfied on service as the testimony of the agent matches the Proof of Service submitted in evidence.

The 2 Month Notice lists an effective vacancy date of September 1, 2020, which corrects under section 53 of the Act to September 30, 2020, as the rent is due on the first day of each month and the 2 Month Notice was not served until July 1, 2020, which makes all of August and all of September the full two months before the effective vacancy date comes into effect under the Act. The agent testified that the tenants did not file an application to dispute the 2 Month Notice and remain in the rental unit.

Analysis

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

Order of possession – Section 49(9) of the Act applies and states:

49(9) 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**

(a) **is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

(b) **must vacate the rental unit by that date.**

[Emphasis added]

In the matter before me, I find the tenants did not dispute the 2 Month Notice and as a result, I find the tenants are conclusively presumed to have accepted the end of tenancy date and that the tenancy ends on the corrected effective vacancy date, which is September 30, 2020. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **September 30, 2020 at 1:00 p.m.** I have used this date as section 53 of the Act automatically corrects the effective vacancy date from September 1, 2020 to September 30, 2020. In addition, I have reviewed the 2 Month Notice and find that it complies with section 52 of the Act.

Conclusion

The landlord's application is fully successful. The tenancy ends on September 30, 2020 at 1:00 p.m. The landlord is granted an order of possession effective September 30, 2020 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The decision and order will be emailed to the landlord. The decision will be sent by regular mail to the tenants as the agent stated that the landlord does not have an email address for the tenants. The landlord must serve the order of possession on the tenants.

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: August 26, 2020

Residential Tenancy Branch