



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenants; and
- compensation for alleged damage to the rental unit by the tenants.

The listed landlord and tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue with regard to the service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) or the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters-

The landlord was informed that I determined his monetary claim for \$2,500 for alleged damage to the rental unit to be premature at this time. The tenancy is not yet over and

the tenants are entitled to repair any damage that is more than reasonable wear and tear before they vacate the rental unit and leave the rental unit reasonably clean.

Additionally, the landlords have not provided sufficient particulars or the breakdown of the claim, as required by the Act and Rules to show how they arrived at the \$2,500 claim.

As a result, the portion of the landlords' application for monetary compensation is dismissed, **with leave to reapply**.

The hearing proceeded only on the landlords' application for an order of possession of the rental unit.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit due to the Notice?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of August 1, 2018, a fixed term through August 1, 2020, monthly rent of \$2,500, due on the 1st day of the month, and no security deposit or pet damage deposit being paid by the tenants to the landlords. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord also provided evidence that the tenancy originally began on July 31, 2017.

The landlord submitted evidence that tenant TS was served the Notice, dated July 24, 2020, by personal service on that date, listing an effective end of tenancy date of September 30, 2020. The tenant did not deny receiving the Notice on that date and in that manner. Filed into evidence was a copy of the Notice.

The reason listed on the Notice for ending the tenancy was so that the landlord or landlord's spouse would occupy the rental unit.

Tenant's response-

The tenant said they were moving out of the rental unit and said they had a contract on another place.

The tenant confirmed not filing an application in dispute of the Notice as he believed the landlords were moving back to the rental unit.

Analysis

The Notice served on the tenants sets out that the tenants had fifteen (15) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenants did not file such application within 15 days, then the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, September 30, 2020.

The undisputed evidence is that the tenants received the landlords' Notice on July 24, 2020, by personal service on tenant TS.

The undisputed evidence also is that the tenants failed to make an application for dispute resolution to contest the Notice.

As such, I therefore find the tenants are conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I have reviewed the Notice and find it was completed in accordance with section 49 of the Act. I also find the Two Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I therefore find the landlords are entitled to an order of possession of the rental unit, pursuant to section 55 of the Act, effective on the end of tenancy date listed on the Notice, September 30, 2020, at 1:00 p.m.

If the tenants fail to voluntarily comply with the order of possession, the Order must be served on the tenants to be enforceable. The Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

The tenants are cautioned that costs of such enforcement, such as bailiff costs and filing fees, are recoverable from the tenants.

Conclusion

The landlords' application for an order of possession of the rental unit is granted.

The landlords have been issued an order of possession of the rental unit, effective September 30, 2020.

The portion of the landlords' application seeking monetary compensation is dismissed, with leave to reapply.

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: September 28, 2020

Residential Tenancy Branch