



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on May 26, 2020 seeking an order of possession of the rental unit. Additionally, the landlord seeks an order to recover money for unpaid rent owing, and the filing fee for their Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 28, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord stated that they used registered mail to deliver notice of the hearing to the tenants after they applied. They stated they provided their documents prepared as evidence to the tenants via email. Based on this, I accept that the landlords served the tenants notice of this hearing. This follows section 89(1)(c) of the *Act*, and the hearing proceeded in the tenants’ absence.

The landlord twice amended their Application to bring information of this matter up to date prior to the hearing. They did so on June 18 and August 20. They similarly provided copies of each updated Application to the tenants via registered mail.

Based on the submissions of the landlord, I accept they served the tenants with notice of this hearing and their Application in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenants’ absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for the Landlord’s Use, pursuant to section 55 of the *Act*?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, they provided a copy of that agreement with their amended application on August 20, 2020. The tenancy began on April 1, 2020, with the rent amount of \$2,600.00 payable on the 1st of each month. There was an initial payment by the tenants of the security deposit for \$1,300.00 on April 1, 2020.

The landlord applied for an Order of Possession pursuant to the Two-Month Notice to End Tenancy for landlord's Use of the Unit (the "Two-Month Notice"). They served this to the tenants on July 11, 2020 by mailing a copy to the tenants' address. They provided a registered mail receipt dated July 11, 2020; this was delivered to the tenants on July 14, 2020.

The landlord also applied for monetary compensation for the loss of rent: \$200 owing for June 2020; \$2,600 owing for July 2020; and \$2,600 for September owing. This totals \$5,400.00.

The landlord provided a copy of an email sent by the tenants on May 13, 2020 stating that they have "issues with [their] pay."

The Two-Month Notice states that the tenants had fifteen days from the date received to apply for dispute resolution, or the tenancy would end on the vacancy date indicated, September 26, 2020. There is no record of the tenants subsequently applying for dispute resolution.

The reason for the landlord serving the Two-Month Notice is their need for the rental unit for family members. In the hearing, the landlord stated their parent to stay in the unit; this changed their original designs in the apartment to have remodelling and redesign after the end of the fixed-term tenancy in 2021.

The tenants did not attend the hearing; there was no material submitted either by them or on their behalf prior to this hearing. Therefore, the landlord's evidence in this hearing goes unchallenged.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by giving notice to end tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(8) allows a tenant who receives a Two Month Notice 15 days to submit an Application for Dispute Resolution to cancel the notice. Section 49(9) stipulates that if a tenant fails to apply within 15 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice they must vacate the rental unit.

I have reviewed the Notice, and I find it complies with form and content requirements of section 52 of the *Act*. Section 90 allows for a document served by mail to be deemed received on the 5th day after it is posted. In accordance with this, I find the tenants were deemed served with the Notice on July 16, 2020, five days after its posting.

I find that the tenants did not dispute the Notice within 15 days, pursuant to section 49(8). I find that the tenants are conclusively presumed to have accepted that the tenancy will end in accordance with section 49(9). This date is September 26, 2020. The landlord's undisputed testimony is that the tenants remain in the rental as of the date of this hearing and did not communicate with the landlord over the past while.

The landlord's testimony shows they issued the Two Month Notice for a valid reason: they need their parents to live at the rental unit, this owing to the public health measures in place. This qualifies as "close family member" by definition in section 49(1). I find this is a valid reason for the landlord to issue the Two Month Notice. This is undisputed by the tenants.

I find the landlord has the authority to issue the Notice under section 49 of the *Act*. I grant the landlord's request for an Order of Possession under section 55 of the *Act*.

Section 26 of the *Act* outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenants has a right under this Act to deduct all or a portion of the rent.

I find the landlord's affirmed testimony shows a pattern of non-payment of rent, starting from June 2020 onwards. The evidence showing tenants not paying rent earlier in May shows the background to this pattern. The landlord stated that they tried to give the tenants opportunities to continue paying on a regular basis, but the tenants were not able to comply.

The landlord provided testimony on this amount and a calculation of the total. As presented, I find the amount of \$5,400.00 is accurate through September 2020. The tenants did not attend the hearing; therefore, there is no evidence to the contrary on this exact amount.

I find the landlord is entitled to an order of possession as well as an award for the unpaid rent amount of \$5,400.00.

As the landlord is successful in their Application, I find that the landlord is entitled to recover the \$100.00 filing fee they paid.

Conclusion

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

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5,500.00 for unpaid rent and recovery of the filing fee.

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