



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPN, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession, further to having served a Two Month Notice to End Tenancy for Landlord's Use dated August 29, 2020 ("Two Month Notice"); and an Order of Possession further to having received a Tenant's Notice to End the Tenancy dated June 28, 2020; and to recover the \$100.00 cost of their Application filing fee.

The Landlords, F.G. and I.L., and a witness for the Landlords - their son, K.L. ("Witness"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords and the Witness, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlords and the Witness.

I explained the hearing process to the Landlords and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlords were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that the Witness served the Tenant with the Notice of Hearing documents in person on September 24, 2020. The Witness testified that he has received emails from the Tenant about the hearing, having even received an email from the Tenant at the eight-minute mark of the hearing. The Witness said that the Tenant said that he did not intend to call in, but was just asking how it was going.

I find that the Tenant was served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlords and Witness in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlords provided their email address in the Application, and they provided the Tenant's email address in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Landlords entitled to an order of possession?
- Are the Landlords entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlords submitted a tenancy agreement for the Parties and confirmed the following details of the tenancy during the hearing. They confirmed that the fixed term tenancy began on September 1, 2014, and ran to August 31, 2015, and then operated on a month-to-month basis. The Landlords said the monthly rent was \$800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$345.00, and no pet damage deposit.

The Landlords said that they need the rental unit for their son, who was evicted from his residence, because the landlord is demolishing it for a development of some kind. The Witness has until November 30, 2020 at 5 p.m. to vacate his rental unit.

As a result, the Landlords served the Tenant with the Two Month Notice, of which they submitted a copy to the RTB. The Two Month Notice was signed and dated August 29, 2020, it has the rental unit address, and was served in person on August 29, 2020. It has an effective vacancy date of October 31, 2020, and the grounds are that the rental unit will be occupied by the Landlord or the Landlord's close family member – the child of the Landlords.

The Witness said:

I've been having difficulty finding full time work, which was the biggest issue. In the period of the last 5 weeks I only worked one week, which is a primary driver

for me to move in with my family.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person applying for dispute resolution. However, in some situations the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

Accordingly, I find that the Landlord has the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Based on the documentary evidence and testimony before me, and keeping in mind that the burden of proof in this matter is on a balance of probabilities, I find that the Landlords have satisfied me that their son intends in good faith to reside in the rental unit. As a result, I am satisfied that the Landlords had cause pursuant to section 49 of the Act to serve the Two Month Notice on the Tenant and to end the tenancy.

I also find that the Two Month Notice issued by the Landlords complies with section 52 of the Act, as it is signed and dated by the Landlords, gives the address of the rental unit, states the effective date of the Notice, the grounds for ending the tenancy, and is in the approved form.

Given the above, and pursuant to section 55 of the Act, I find that the Landlords are, therefore, entitled to an Order of Possession. As the Tenant is still living in the rental unit beyond the effective vacancy date in the Two Month Notice, I find that the Tenant is overholding in the rental unit. Accordingly, I find that the Order of Possession will be **effective two days after being served** on the Tenant.

As they are successful in their Application, I also award the Landlord with recovery of the \$100.00 Application filing fee. The Landlords are authorized to deduct \$100.00 from the Tenant's security deposit once.

Conclusion

The Landlords' claim for an Order of Possession is successful, as the Landlords provided sufficient evidence to support the validity of the Two Month Notice they serve on the Tenant. I also award the Landlords recovery of the **\$100.00** Application filing fee. The Landlords are authorized to deduct \$100.00 from the Tenant's \$345.00 security deposit in full satisfaction of this award.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 20, 2020

Residential Tenancy Branch