



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL

Introduction

On September 16, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*").

On October 16, 2020, the Landlord amended his Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the hearing 18-minute hearing. All parties in attendance provided a solemn affirmation.

The Landlord advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on September 25, 2020 (the registered mail tracking number is noted on the first page of this Decision). The registered mail tracking history indicated that this package was received on September 28, 2020. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

He also advised that the Tenant was served the Amendment by registered mail on October 16, 2020 (the registered mail tracking number is noted on the first page of this Decision). The registered mail tracking history indicated that this package was received on October 19, 2020. Based on this undisputed testimony, and in accordance with Sections 88 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord's Amendment.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord entitled to a Monetary Order for compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on December 1, 2001, that the rent is currently established at \$1,850.00 per month, and that it is due on the first day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He stated that the Notice was served to the Tenant in person on July 13, 2020. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, the parent or child of that individual's spouse)." The effective end date of the tenancy was noted as October 1, 2020 on the Notice.

The Landlord advised that his daughter had finished school and the plan was for her and her fiancé to move into the rental unit to start their life. He stated that they are currently living in a basement suite and they had already given their notice to end their tenancy as they had planned on living in the rental unit. As such, they are currently living in a state of limbo. He referenced a signed tenancy agreement dated July 12, 2020 between him and his daughter, that was submitted as documentary evidence, to support his position. This tenancy was to begin as of October 1, 2020.

In addition, he stated that he is seeking monetary compensation in the amount of **\$1,850.00** because the Tenant did not pay October 2020 rent. He advised that the

Tenant already withheld September 2020 rent pursuant to the compensatory requirements of Section 51(1) of the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of occupying the rental unit, in good faith, for himself and/or a close family member. Furthermore, this Section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 55(1) of the *Act* states that if the Tenant has not submitted an Application for Dispute Resolution seeking to cancel the notice within the required timeframe and the Landlord's Notice complies with all the requirements of Section 52 of the *Act* and is upheld, the Landlord must be granted an Order of Possession.

The undisputed evidence before me is that the Tenant received the Notice on July 13, 2020. As the fifteenth day fell on Tuesday July 28, 2020, the Tenant must have made her Application by this date at the latest. However, the undisputed evidence is that the Tenant did not dispute this Notice. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

When reviewing the totality of the evidence before me, I am satisfied by the Landlord's undisputed testimony and evidence that he will be using the property for the stated purpose. As such, I find that the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on July 13, 2020 complies with the requirements set out in Section 52.

As I am satisfied of the undisputed evidence supporting the reason the Notice was served, as the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Furthermore, as the undisputed evidence is that the Tenant is also in arrears for rent outstanding, I grant the Landlord a monetary award in the amount of \$1,850.00 for the unpaid rent for October 2020.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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.

In addition, I provide the Landlord with a Monetary Order in the amount of **\$1,850.00** 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 Small Claims Division of the Provincial Court 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 10, 2020

Residential Tenancy Branch