



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL

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 September 7, 2020 ("Two Month Notice"), and for a monetary order for unpaid rent in the amount of \$4,000.00.

The Landlord and an agent for the Landlord, Z.C. ("Agent") 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 30 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Agent, 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 Landlord and the Agent.

I explained the hearing process to the Landlord and Agent and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her 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 and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she had a friend serve the Tenant with the Notice of Hearing documents in person on December 11, 2020. The Agent said that the friend who served the Notice of Hearing package on the Tenant said that the Tenant said he would not be attending the hearing. I find that the Tenant was deemed 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 Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and confirmed it in the hearing. The Landlord said that she did not have the Tenant's email address, so I said the Decision would be mailed to him. The Landlord confirmed her understanding that the Decision would be sent to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, the Landlord withdrew her claim for compensation for unpaid rent, and she said she was only seeking an order of possession from the Director.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord said that the Parties have a written tenancy agreement, and that the periodic tenancy began on June 1, 2017, with a monthly rent of \$2,000.00, due on the first day of each month. The Landlord said that the Tenant did not pay the Landlord a security deposit or a pet damage deposit.

The Landlord said that a friend of hers served the Tenant with the Two Month Notice in person on September 7, 2020, which Notice was signed and dated September 7, 2020. The Two Month Notice has the rental unit address and an effective vacancy date of November 30, 2020. The ground for the eviction is that the rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Landlord said that her son will move into the rental unit when it is vacated by the Tenant.

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 of the Act also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse. I find that the Landlord's son intends to move into the rental unit with his mother's permission, once it is vacant, and this complies with the Act.

Further subsections 49 (8) and (9) of the Act state:

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(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]

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the Two Month Notice on September 7, 2020. I also find that the Two Month Notice is consistent with section 52, as to form and content.

Section 49(9) of the Act states that if a tenant who has received a Two Month Notice does not apply for dispute resolution within 30 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the Two Month Notice, I find that he is conclusively presumed under section 49(9) of the Act to have accepted the Two Month Notice, and I find that the tenancy, therefore, ended on November 30, 2020.

As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the effective date has passed and the Agent testified that the Tenant remains in the rental unit, notwithstanding the Two Month Notice, the Order of Possession will, therefore, be **effective two days after service** on the Tenant.

Conclusion

The Landlord is successful in her Application for an Order of Possession for the rental unit, as she served the Tenant with a valid Two Month Notice, which I find to be enforceable, pursuant to sections 49 and 52 of the Act. The Landlord withdrew her Application for a Monetary Order from the Tenant.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is 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 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: March 01, 2021

Residential Tenancy Branch