



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

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 October 29, 2020 ("Two Month Notice").

The Landlord, S.G., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her 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 Tenants 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 served each Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on October 29, 2020. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenants were 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 Tenants.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and said she did not have an email address for the Tenants. As such, she confirmed her understanding that the Decision would be emailed to her and mailed to the Tenants, and that any Orders would be sent to the appropriate Party in this manner.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession, based on the Two Month Notice?

Background and Evidence

The Landlords submitted a copy of the tenancy agreement and in the hearing, the Landlord confirmed that the periodic tenancy began on August 1, 2018, with a monthly rent of \$7,000.00, due on the first day of each month. The Landlord said that the Tenants did not pay the Landlord a security or pet damage deposit for this tenancy.

The Landlord submitted a copy of the Two Month Notice that was dated, but not signed on October 29, 2020, although it has the Landlord's name on it. It has the rental unit address, and it was served by registered mail on October 29, 2020. The effective vacancy date on the Two Month Notice of December 29, 2020, is automatically corrected to December 31, 2020, pursuant to section 53 of the Act. The ground for the Two Month Notice is that the rental unit will be occupied by the Landlord's child or the child of the Landlord's spouse.

The Landlord confirmed that the Tenants have not complied with the Two Month Notice and remain in the rental unit as of the date of the hearing. The Tenants did not dispute the Two Month Notice by filing for dispute resolution at the RTB.

Analysis

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

Given the evidence before me, and pursuant to section 90 of the Act, I find that the Tenants were deemed served with the Two Month Notice on November 3, 2020, five days after it was sent by registered mail on October 29, 2020.

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 15 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 Tenants disputed the Two Month Notice, I find that they are conclusively presumed under section 49(9) of the Act to have accepted the Two Month Notice. I find that the tenancy, therefore, ended on December 31, 2020. As a result, I find that the Tenants are 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 corrected effective date has passed and the Tenants have not complied with the Two Month Notice, the Order of Possession will therefore be **effective two days after service** on the Tenants.

Conclusion

The Landlords are successful in their Application, as the Tenants are conclusively presumed to have accepted the effective vacancy date in the Two Month Notice.

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 Tenants. The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants 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 09, 2021

Residential Tenancy Branch