



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on February 17, 2021 (the "Application"). The Landlords applied for an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 27, 2021 (the "Notice"). The Landlords also sought to recover the filing fee.

The Agent for the Landlords attended the hearing. Nobody attended the hearing for the Tenants. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agent provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlords' evidence.

The Agent confirmed the hearing package and evidence were sent to the Tenants at the rental unit by registered mail on February 28, 2021. The Agent confirmed Tracking Numbers 1 and 2 relate to this. The Landlords had submitted photos of the packages. I looked Tracking Numbers 1 and 2 up on the Canada Post website. The website shows notice cards were left March 03, 2021 and March 08, 2021 for the package with Tracking Number 1 and March 05, 2021 and March 14, 2021 for the package with Tracking Number 2. The website shows the packages were unclaimed and returned.

Based on the undisputed testimony of the Agent, photos and Canada Post website information, I am satisfied the Tenants were served with the hearing packages and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenants cannot avoid service by failing to pick up registered mail packages. The Tenants are deemed to have received the packages March 05, 2021

pursuant to section 90(a) of the *Act*. I also find the Landlords complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony of the Agent and evidence submitted by the Landlords. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the Notice?
2. Are the Landlords entitled to recover the filing fee?

Background and Evidence

The Agent testified as follows.

There is a tenancy agreement between the parties which started September 01, 2014 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent is \$2,950.00 per month due on the first day of each month. The Tenants paid a \$1,300.00 security deposit and no pet damage deposit.

The Notice was issued because the Landlords sold their house and are moving into the rental unit. The Proof of Service is accurate. The Agent is not aware of the Tenants disputing the Notice. The Landlords are seeking an Order of Possession effective May 31, 2021.

The Notice was submitted. The Notice is addressed to the Tenants. The Notice refers to the rental unit. The Notice is signed and dated January 27, 2021 by Landlord Y.W. The effective date of the Notice is March 31, 2021. The grounds for the Notice are that the rental unit will be occupied by the Landlord or a close family member.

A Proof of Service was submitted showing the Notice was attached to the door of the rental unit January 27, 2021. The Proof of Service is signed by a witness.

The Landlords submitted a Contract of Purchase and Sale showing they sold their house.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act*. Pursuant to section 49(8) of the *Act*, the Tenants had 15 days from receipt of the Notice to dispute it.

Based on the undisputed testimony of the Agent and Proof of Service, I am satisfied the Tenants were served with the Notice in accordance with section 88(g) of the *Act* on January 27, 2021. Pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the Notice on January 30, 2021.

The Tenants had until February 16, 2021 to dispute the Notice given the 15th day fell on a holiday weekend. I accept the undisputed testimony of the Agent that they are not aware of the Tenants disputing the Notice. I have no evidence before me that the Tenants did dispute the Notice.

Section 49(9) of the *Act* states:

(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.

I find the Tenants did not dispute the Notice in accordance with section 49(8) of the *Act*. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on March 31, 2021, the effective date of the Notice. The Tenants were required to vacate the rental unit by March 31, 2021.

The Notice must comply with section 52 of the *Act*. I have reviewed the Notice and find that it does comply with section 52 of the *Act*.

I find the Landlords are entitled to an Order of Possession based on the Notice pursuant to section 55(2) of the *Act*. The Order of Possession is effective at 1:00 p.m. on May 31, 2021.

Given the Landlords were successful in the Application, the Landlords are entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act* and are issued a Monetary Order in this amount.

Conclusion

The Landlords are issued an Order of Possession effective at 1:00 p.m. on May 31, 2021. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are issued a Monetary Order in the amount of \$100.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: May 21, 2021

Residential Tenancy Branch