



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord's use of property, pursuant to section 49; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants, landlord Z.K. and an agent for all the landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the tenants were served with the landlords' application for dispute resolution via registered mail on or around May 5, 2021. I find that the landlords' application for dispute resolution as served on the tenants in accordance with section 89 of the *Act*.

Amendment

The agent testified that landlords S.K. and Z.K. are seeking an amendment to add the new owner of the subject rental property to this dispute proceeding. The tenants

testified that they had no objection to the amendment sought. Pursuant to section 64 of the *Act*, I amend the landlords' application to include landlord C.D. as a landlord.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for landlords' use of property, pursuant to section 49 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018 and the tenants continue to reside at the subject rental property. Monthly rent in the amount of \$2,052.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenants to landlords S.K. and Z.K. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenants were served with a Two Month Notice for Landlord's Use of Property (the "Two Month Notice") in person and via registered mail on February 23, 2021. The tenants testified that the Two Month Notice was received on February 23, 2021. The Two Month Notice was entered into evidence and is dated February 23, 2021 and states that the tenants must vacate the subject rental property by April 30, 2021 because:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit.

The agent testified that landlord S.K. and landlord Z.K. sold the subject rental property to landlord C.D. The agent testified that landlords S.K. and Z.K. served the tenants with the Two Month Notice because landlord C.D. provided them with written notice of their intention to move into the subject rental property upon completion of the sale. The

landlords entered into evidence a document titled "TENANT OCCUPIED PROPERTY - BUYERS NOTICE TO SELLER FOR VACANT POSSESSION" which states:

WHEREAS:

A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated Feb 7, 2021 respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").

B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.

C. The Property is currently rented to tenant(s).

D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.

NOW THEREFORE in accordance with Section 49 of the Residential Tenancy Act, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the Residential Tenancy Act terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on April 30th, 2021.

The above document is dated February 18, 2021.

Both parties agree that the sale of the subject rental property has completed, and that landlord C.D. is the new owner. The agent testified that he represents all the landlords in this hearing and that landlord C.D. still wants to move into the subject rental property but has been unable to do so because the tenants are overholding. Both parties agree that the tenants have been paying "use and occupancy" fees to landlord C.D. since the sale of the subject rental property completed.

The tenants testified that they filed an Application for Dispute Resolution with the Residential Tenancy Branch to dispute the Two Month Notice on April 28, 2021. The tenants testified that this application was filed late because the tenants did not know about the 15-day deadline. The tenants were not able to provide me with a file number to substantiate this claim. The tenants testified that they did not serve the landlords with

their application to cancel the Two Month Notice. The Residential Tenancy Dispute Management System has no record of an application for dispute resolution filed by the tenants to dispute the Two Month Notice.

The tenants testified that they have been trying to find a new place to live but have been unsuccessful. The tenants testified that the landlords are in the right but that they need more time to find a new place to live.

Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the Two Month Notice was effected on the tenants on February 23, 2021, in accordance with section 88 of the *Act*. Upon review of the Two Month Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 49(5) and section 49(6) of the *Act* state that if a tenant who has received a Two Month Notice does not make an application 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.

In this case, the tenants did not dispute the Two Month Notice within 15 days of receiving it. I find that the tenants have not proved that they filed an application with the Residential Tenancy Branch to cancel the Two Month Notice. I find that even if the tenants filed an application to cancel the Two Month Notice on April 28, 2021, they would still be presumed to have accepted the end of the tenancy on April 30, 2021 because the alleged filing was more than 15 days after the date the tenants received the Two Month Notice.

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. Policy Guideline 36 states:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the

party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I find that not knowing about the 15-day deadline is not an exceptional circumstance as defined above. The tenants confirmed receipt of the Two Month Notice on February 23, 2021. The Two Month Notice states that the tenants have 15 days to dispute the notice. Failure to read the Two Month Notice is not an exceptional circumstance.

I find that, pursuant to section 49 of the *Act*, the tenants' failure to file to dispute the Two Month Notice within 15 days of receiving the Two Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by April 30, 2021. As this did not occur, I find that the landlord C.D. is entitled to a 2-day Order of Possession as landlord C.D. is the current owner of the subject rental property. Landlord C.D. will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to landlord C.D., effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlords in the amount of \$100.00.

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 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: August 27, 2021

Residential Tenancy Branch