



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

The Landlord applies for an order for possession pursuant to s. 55 of the *Residential Tenancy Act* (the “*Act*”) after issuing a Two-Month Notice to End Tenancy for Landlord’s Use of the Property. The Landlord also seeks return of their filing fee pursuant to s. 72 of the *Act*.

G.K. appeared on his own behalf as the Landlord. G.S. and G.C. appeared as agents for the Landlord. H.K. appeared as a witness for the Landlord. The Tenant did not appear at today’s hearing nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled at 9:30 AM on today’s date.

The Landlord issued a Two-Month Notice to End Tenancy signed on March 13, 2021 indicating that the Landlord’s child or spouse would occupy the rental unit. The Landlord advised having served the Notice to End Tenancy by posting it to the door of the rental unit on March 13, 2021. I find that the Notice to End Tenancy was served in accordance with s. 88 of the *Act*. I further find that the Tenant is deemed to have been served with the Notice to End Tenancy on March 16, 2021 pursuant to s. 90 of the *Act*.

The Landlord advised having served the Notice of Dispute Resolution on the Tenant by way of registered mail sent on June 18, 2021. The Landlord’s evidence was served on the Tenant by way of second registered mail sent on September 21, 2021. Review of the tracking numbers provided by the Landlord indicate that neither package has been picked up by the Tenant. Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the

deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlord is entitled to serve the Notice of Dispute Resolution and evidence by way of registered mail in accordance with s. 89 of the *Act*. Policy Guideline #12 is clear that failing to pick up registered mail sent to correct address does not impact the deemed service provisions of the *Act*. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act* on June 18, 2021 and the evidence on September 21, 2021. I find the Tenant is deemed to have been served with the Notice of Dispute Resolution on June 23, 2021 and with the evidence on September 26, 2021 pursuant to s. 90 of the *Act*.

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant failed to appear at the hearing despite being served with the relevant material and the hearing was conducted in their absence.

Issue(s) to be Decided

- 1) Whether an order for possession should be granted pursuant to the Two-Month Notice to End Tenancy signed March 13, 2021?
- 2) Whether the Landlord is entitled to return of their filing fee?

Background and Evidence

The tenancy began on or about June 1, 2018. The Landlord confirmed rent was \$525.00 per month payable on the first of each month. The Landlord indicated that they do not hold a security deposit with respect to this tenancy.

The Landlord confirmed that the Notice to End Tenancy entered into evidence was the Notice to End Tenancy served on the Tenant on March 13, 2021. The notice is in the form RTB-32 and is signed by the Landlord on March 13, 2021. The effective date in the

notice is listed as May 13, 2021. In the notice, it indicates that the Landlord's child or spouse will be occupying the rental unit.

The Landlord advised that the rental unit is a basement suite with a separate entrance and kitchen that is not shared with the main floor, where he and his family reside. A letter from the Landlord's son indicates that he intends to occupy the rental unit, which was confirmed by the Landlord at the hearing.

The Landlord confirmed that they have not received an application from the Tenant disputing the Notice to End Tenancy. The Tenant continues to reside in the rental unit and the Landlord advised that the Tenant indicated to him that he has no intention of vacating the rental unit.

Analysis

The Landlord applies for an order for possession after issuing a Two-Month Notice to End Tenancy for Landlord's use of the property. They also seek return of their filing fee.

In accordance with s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit pursuant to s. 49(3) of the *Act*. Pursuant to s. 51(1) of the *Act*, a tenant who receives a notice under s. 49 is entitled to compensation equivalent to one month's rent payable under the tenancy agreement on or before the effective date of the notice.

Upon review of the Notice to End Tenancy, I am satisfied that it complies with the formal requirements of s. 52 of the *Act*. It is in the proper form, is dated and signed by the Landlord, lists the address for the rental unit, states the grounds ending the tenancy, and lists an effective date. There is no dispute that the Landlord's son is a close family member as defined by s. 49.

I note that the effective date is incorrect in that it ought to have been listed as May 31, 2021 in accordance with s. 49(2)(a). I find that this is a technical deficiency in the notice and that the Tenant knew the nature and the effect of the notice. Under the circumstances, I find it reasonable to amend the notice to correct the effective date to May 31, 2021 and exercise my discretion under s. 66 of the *Act* to correct the technical deficiency in the notice.

Pursuant to s. 49(8)(a), the Tenant had 15-days after receiving it to dispute the notice by filing an application with the Residential Tenancy Branch. Indeed, the top of the notice indicates the following:

HOW TO DISPUTE THIS NOTICE

You have the right to dispute this Notice **within 15 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Here, the Tenant failed to dispute the notice in the timeframe set out under the *Act*. Given this, s. 49(9) is engaged and I find that the Tenant is **conclusively presumed** to have accepted that the tenancy ends on May 31, 2021 and ought to have vacated the rental unit by that date.

As the Tenant has not vacated the rental unit, they are now overholding tenants and the Landlord is, therefore, entitled to an order for possession.

Conclusion

Pursuant to s. 55 of the *Act*, I order that the Tenant provide vacant possession of the rental unit to the Landlord no later than **two (2) days** after being served by the Landlord. It is the Landlord's obligation to serve the order on the Tenant.

If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

As the Landlord was successful in their application, they are entitled to their filing fee. Pursuant to s. 72 of the *Act*, I hereby order that the Tenant pay \$100.00 to the Landlord for the Landlord's filing fee.

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: October 13, 2021

Residential Tenancy Branch