



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Vela Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlord applied for:

- an order of possession, having served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, dated June 17, 2021 (the Two Month Notice); and
- the filing fee.

The hearing participants were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Tenants by registered mail on November 4, 2021. The Tenants confirmed they received it on an unknown date. In accordance with section 90 of the Act, I find the NDRP and evidence deemed received by the Tenants on November 9, 2021. I find the Landlord served the Tenants in accordance with section 89 of the Act.

The Tenants testified they served their responsive evidence on the Landlord by Fed Ex on November 19, 2021, and the Landlord confirmed they received it that day. While I acknowledge that sending by courier is not one of the ways documents are required or permitted to be served, I find the Landlord sufficiently served in accordance with section 71 of the Act.

Issues to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the periodic tenancy. The rental unit was purchased by the current owner on May 15, 2018. Rent is \$1,745.00, due on the first of the month. The original Tenant paid a security deposit of \$850.00 and a pet deposit of \$850.00 to the previous owner; the deposits have not been returned.

The Landlord submitted as evidence a copy of the Two Month Notice. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the Landlord or the Landlord's spouse will occupy the unit.

In the hearing, the Landlord confirmed the reason for the Two Month Notice, and that they intended to move into the rental unit.

The Landlord testified they served the Two Month Notice on the Tenants by registered mail and email on June 17, 2021. The Tenants confirmed receipt of the Two Month Notice by email, on an unknown date in June, 2021.

When asked if they disputed the Two Month Notice, the Tenant stated: "I thought that's what we were doing here." The Tenants then confirmed they had not disputed the Two Month Notice.

The Tenants provided additional testimony regarding mold and repair issues, from a previous Residential Tenancy Branch dispute, which remain unresolved. The Tenants testified that after they asked the Landlord in writing on June 1, 2021, to address the unresolved issues, they were given a 30-day notice letter dated June 3, 2021, a copy of which was submitted by the Tenants as evidence. It is a type-written letter, stating that the Landlord will be moving into the rental unit, and that the Tenants must move out of the unit on or before June 3, 2021.

The Tenants also testified that on July 16, 2021 they were asked by the new Landlord to sign a new tenancy agreement, which required payment of a security deposit and a pet deposit. The Tenants testified that after they pointed out they had already paid the

deposits to a previous owner, the new Landlord asked them, on July 22, 2021, to sign an updated version of the tenancy agreement, which did not demand another security deposit and pet deposit.

The Tenants testified that it was confusing to be presented with the Two Month Notice, then with a new tenancy agreement; they stated they did not sign the updated tenancy agreement with the new Landlord, and that they did not know why they needed to sign the new tenancy agreement if they “were getting evicted.”

The Landlord submitted as evidence a signed affidavit stating they will be moving into the rental unit.

Analysis

The 30-day notice letter, dated June 3, 2021 and presented to the Tenants, does not meet the form and content requirements of section 52 of the Act, and is therefore without effect.

I find the Landlord served the Two Month Notice on the Tenants in accordance with section 88 of the Act. As the Landlord served the Two Month Notice by registered mail and email on June 17, 2021, the Two Month Notice is deemed received by the Tenants on June 22, 2021, per section 90 of the Act.

I find the Two Month Notice meets the form and content requirements of section 52 of the Act.

Section 49(8)(a) of the Act provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Information on how to dispute the notice is found on page 1 of the [Two Month Notice](#).

I find that the Tenants did not file an application for dispute resolution within 15 days of June 22, 2021, the deadline under section 49(8)(a) of the Act. Accordingly, I find that the Tenants are conclusively presumed under section 49(9) to have accepted that the tenancy ended on the corrected effective date of the Two Month Notice, August 31, 2021, and must vacate the rental unit. Per section 53 of the Act, incorrect effective dates are automatically changed.

Therefore, in accordance with section 55 of the Act, I find that the Landlord is entitled to an order of possession.

While I acknowledge the Tenants' testimony that it was confusing to be asked to sign a new lease by the new Landlord after being served with the Two Month Notice, the Act and the Two Month Notice itself are clear on the time limit and requirement for tenants to apply to dispute the Notice, and as described above, the result of tenants failing to meet the 15 day time limit. The Two Month Notice is deemed to have been received on June 22, 2021. This gave the Tenants until July 7 to dispute it. The deadline to dispute the Notice had already passed when the Landlord presented a new tenancy agreement on July 16, 2021. As a result, although perhaps confusing to the Tenants, the Landlord's actions could not have impacted the Tenants' decision not to dispute the Two Month Notice.

As the Landlord has been successful in their application, I find they are entitled to recover the \$100.00 filing fee they paid from the Tenants.

Conclusion

The Landlord's application is granted.

I grant the Landlord an order of possession, which must be served on the Tenants and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$100.00. The monetary order must be served on the Tenants. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 6, 2021

Residential Tenancy Branch