



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

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

- an order of possession pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified she served that the tenant personally with the notice of dispute resolution form and evidence on January 11, 2022. The tenant confirmed this. I find that the tenant was served with this package on January 11, 2022, in accordance with section 88 and 89 of the Act.

The tenant testified that he submitted no evidence to the Residential Tenancy Branch and, therefore, had no evidence to serve to the landlord.

The parties were advised that pursuant to rule 6.11 of the Residential Tenancy Branch Rules of Procedure (the "**Rules of Procedure**"), persons are prohibited from recording dispute resolution hearings, except as allowed by rule 6.12. As neither party had requested or been granted authorization to hire an accredited Court reporter as allowable under rule 6.12, I confirmed with the parties that they were not recording the hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) recover the filing fee;

If the landlord fails in her application, are the tenants entitled to:

- 1) an order cancelling the Notice;

Background and Evidence

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

The parties entered into a written fixed term tenancy agreement starting February 1, 2021 and ending February 1, 2022. The agreement stipulated that tenancy would end for "landlord's use of property (move in)". Monthly rent is \$3000.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1500.00. The landlord still retains this deposit.

The landlord testified that the parties entered into a one-year tenancy agreement with the understanding that at the end of the fixed term, February 1, 2022, the landlord's mother would move into the rental unit. The tenants did not move out on February 1, 2022.

The landlord first testified that because the suite was not available at the end of January 2022, she needed "to rent a suite for her mother" for a couple months. She did not know whether she needed to provide any move out notice. Later in her testimony, the landlord stated her mother and father are currently living with her sister and her sister's son in a bachelor suite.

The landlord said that she reminded the tenant toward the end of last year that he needed to leave at the end of January 2022. Based on the conversation, the landlord did not believe that the tenant wanted to leave. She contacted the Residential Tenancy Branch and was told she could issue a Two-Month Notice. The landlord issued the Two Month Notice on November 29, 2021, with an effective date of February 01, 2022. She filed for Dispute Resolution on December 27, 2021, well before the effective date on the Two-Month Notice.

The tenants did not vacate the premises on February 1, 2022, and so the arbitration proceeded. The landlord had a number of complaints about the tenants including additional costs associated with utilities that were included in the fixed term tenancy but, in her opinion, should no longer be incurred by her. The tenants purchased a pet without consulting with the landlord first and her mother, who is moving into the rental unit, is pet sensitive.

In response to the tenant's subsequent testimony- that the landlord provided various versions /reasons for the end of tenancy- the landlord said that she never intended to sell the property, it was always intended for family use. She claimed the property was purchased with her parents' money. She is aware of the law and knows she cannot raise the rent and denies asking for an additional \$800.00 in rent if the tenants remained

in the rental unit through February. The landlord was adamant that she wanted vacant possession of the unit immediately.

The tenants testified that from the beginning of tenancy, they were aware that the landlord only wanted a fixed term tenancy. They believe the fixed term tenancy was a way around rent controls, supported by her verbal request for an additional \$800.00 in rent if they stayed through February.

The tenants explained that they have been searching for a property for the last several months and have finally found a new rental unit available at the end of February. They reached out to the landlord to extend their occupancy for one month. Their request was met with an unequivocal “no”.

The tenant questioned the veracity of the evidence provided by the landlord stating that the landlord provided different versions for the end to tenancy stating the last version was the “mother scenario”.

The tenants did not file for Dispute Resolution within the fifteen days after receiving the Two Month Notice.

Analysis

Section 49(9) of the *Act* stipulates that a tenant is **conclusively presumed** to have accepted that a tenancy ends on the effective date of a notice received pursuant to s. 49 of the *Act* and that the tenant must vacate the rental unit by that date **unless the tenant disputes the notice within fifteen days of receiving it**.

A conclusive presumption is one in which the proof of certain facts makes the existence of the assumed facts beyond dispute. The presumption cannot be rebutted or contradicted by evidence to the contrary. **It is important to note that the conclusive presumption set out in s. 47(5) of the *Act* is not that the Landlord has lawful grounds to end the tenancy; rather, it is a conclusive presumption that the tenant has accepted that the tenancy is ending on the effective date of the Notice.**

The tenants did not dispute the Notice to End Tenancy received on November 29, 2021, within fifteen days of receiving it. Review of the Two-Month Notice confirms the Notice complies with the requirements for form and content pursuant to s. 52 of the *Act*. The tenants, therefore, are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy, February 1, 2022. The landlord is entitled to an order of possession. As the effective date has now passed the landlord is entitled to an order of possession effective two (2) days after service to the tenant pursuant to s. 55. I will therefore issue an order of possession effective two (2) days after service.

A tenant who has received a Two Month Notice is entitled to compensation in the amount of one (1) month's rent. I order that the landlord reimburse the tenants the equivalent of one (1) months' rent, **\$3000.00**, reduced by the number of days the tenants occupy the rental unit in February. For example:

$$\text{\$3000.00/28} = \text{\$107.14 per day}$$

$$\text{X\# of days remaining in February} \times \text{\$107.14} = \text{amount owed to tenants}$$

I order the landlord **not** to deduct utilities from any reimbursement owed to the tenant. If a deduction is made, the tenant may file an application with the Residential Tenancy Board.

Finally, the landlord and the tenant should be aware that if the **landlord** fails to use the rental unit as stated on the Two Month Notice, then pursuant to section 51 of the *Act*, the landlord may be subject to paying the tenants the equivalent of 12 months' rent as a penalty.

Pursuant to section 72(1) of the *Act*, as the landlord has been successful in the application, she may recover the \$100.00 filing fee from any monies owed to the tenant.

Conclusion

Pursuant to section 55 of the *Act*, I order that the tenants deliver vacant possession of the rental unit to the landlords within two days of being served with a copy of this decision and attached order(s) by the landlord. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72(1) of the *Act*, I authorized the landlord to deduct \$100.00 from the tenants' security deposit.

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: February 25, 2022

Residential Tenancy Branch