



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 20, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The landlord, MJ (landlord), and the son and agent for the landlord, HJ (agent) and the tenant attended the teleconference hearing. The parties were affirmed, the hearing process was explained to the parties and during the hearing the parties were given the opportunity to provide their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Regarding the service of evidence the tenant confirmed being served with and having had the opportunity to review the evidence from the landlord. The tenant also confirmed that they did not serve any evidence on the landlord or Residential Tenancy Branch (RTB). As a result, I find the tenant was sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an

investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. The tenant confirmed that they did not have an email address and as such, the decision will be sent via regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- If yes, is the landlord also entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on March 1, 2012. Monthly rent in the amount of \$600.00 is due on the first day of each month. The tenant paid a \$300.00 security deposit at the start of the tenancy.

A copy of the 2 Month Notice was submitted in evidence. It is dated September 20, 2021. The tenant confirmed that they had been served with the 2 Month Notice but could not recall the date. The agent stated that it was served on the tenant at 8:55 p.m. at the rental unit on September 20, 2021. The effective vacancy date listed on the 2 Month Notice was December 1, 2021, which has passed. The 2 Month Notice states on page 2 in part the following:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☒ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

☐ All of the conditions for the 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 a close family member intends in good faith to occupy the rental unit.

☐ The tenant no longer qualifies for the subsidized rental unit.

The agent stated that they will be moving into the rental unit and that they are the son of the landlord. The tenant confirmed that they did not file an application to dispute the 2 Month Notice.

The landlord confirmed they received a cheque for money for February 2022. As a result, the parties were advised that the earliest order of possession date would be February 28, 2022 at 1:00 p.m.

The tenant hung up at 14 minutes into the hearing once they were advised that by not filing an application to dispute the 2 Month Notice, that conclusive presumption under the Act applied, which will address further below. The hearing concluded at 15 minutes.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 55(2)(b) of the Act applies and states:

Order of possession for the landlord

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

[emphasis added]

Based on the above and considering that the tenant failed to file an application to cancel the 2 Month Notice even though they were served with the 2 Month Notice, I find the tenancy ended on the effective vacancy date listed, which was **December 1, 2021**. In addition, **I grant** the landlord an order of possession **effective February 28, 2022 at 1:00 p.m.** as the landlord confirmed that they have a cheque for February 2022 which they can still cash.

I find the 2 Month Notice complies with section 52 of the Act as it is signed, dated and the correct form was used. I also find the landlord provided sufficient evidence to support that their son was occupying the rental unit based on the testimony of the son of the landlord.

As the landlord's application had merit, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act. I authorize the landlord to deduct \$100.00 from the tenant's security deposit of \$300.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to 62(3) of the Act. Pursuant to sections 38 and 62(3) of the Act, I find that the tenant's security deposit balance is \$200.00 effective immediately.

Conclusion

The landlord's application is successful.

The tenancy ended on December 1, 2021.

The landlord has been granted an order of possession effective February 28, 2022 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted the filing fee which I find reduces the tenant's security deposit down to \$200.00 effective immediately and as noted above.

This decision will be emailed to both parties. The order of possession will be sent via email to the landlord for service on the tenant.

The tenant is cautioned that they can be held liable for all costs related to enforcing the order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 24, 2022

Residential Tenancy Branch