



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 23, 2021. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 28, 2021 (the Two Month Notice); and
- an order granting recovery of the filing fee.

The Landlord named in the application is different than the name of the landlord named in the tenancy agreement submitted. However, the Landlord testified he is the owner of the company which operates the manufactured home park in which the Tenant resides. I find the Landlord is a landlord for the purposes of this proceeding, as defined in section 1 of the Act.

The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing

The Landlord testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on November 25, 2021. In support, the Landlord submitted Canada Post registered mail receipts and tracking information which confirmed the date and time of purchase and included the tracking number. Pursuant to sections 89 and 90 of the Act, documents served by registered mail are deemed to be received five days later. I find the Notice of Dispute Resolution Proceeding package is deemed to have been received by the Tenant on November 30, 2021.

The Landlord was advised that Rule of Procedure 6.11 prohibits the recording of proceedings. The Landlord confirmed he was not recording the hearing.

The Landlord was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, the Landlord testified that the same dispute was filed and heard previously. The Residential Tenancy Branch Dispute Management System indicates that an application was made on July 13, 2021, seeking an order of possession based on the undisputed Two Month Notice. A hearing was conducted by an arbitrator on November 15, 2021. Based on the Landlord's acknowledgement that he did not serve the Tenant with the Notice of Dispute Resolution Proceedings package, the arbitrator dismissed the Landlord's application with leave to reapply. I find the Landlord reapplied in a timely manner and that there was no undue delay in seeking an order of possession based on the undisputed Two Month Notice.

The file number of the related proceeding is included above for ease of reference.

Issues to be Decided

1. Is the Landlord entitled to an order of possession based on the Two Month Notice?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord testified the tenancy began on or about June 5, 1999, that monthly rent of \$567.00 is currently due on the first day of each month, and that the Tenant did not pay a security deposit. A copy of the tenancy agreement was submitted into evidence. The Landlord confirmed the rental unit is a manufactured home but that the Tenant does not own the structure.

The Landlord testified the Two Month Notice was served on the Tenant by giving a copy to SB on March 30, 2021. The Landlord confirmed that SB is an adult tenant named on the tenancy agreement who resides in the rental unit. The Landlord submitted a document bearing the signature of SB as an acknowledgment of receipt of the Two Month Notice. The Two Month Notice was issued on the basis that the unit would be occupied by the Landlord and his spouse. A copy of the Two Month Notice was submitted into evidence.

The Landlord testified that he and his spouse currently live in another community but wish to live and work closer to their businesses.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49 of the Act permits a landlord to take steps to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit by issuing a notice to end tenancy. A tenant has 15 days after receipt of a notice to end tenancy issued under this section to dispute it. Failure to dispute the notice to end tenancy results in the conclusive presumption the tenancy ends on the effective date of the notice and must vacate the rental unit.

In this case, I find the Two Month Notice was served on the Tenant by giving a copy to SB, an adult who resides in the rental unit and is named on the tenancy agreement, on March 30, 2021. I find the Two Month Notice was received by the Tenant on that date. Accordingly, the Tenant had until April 14, 2021, to dispute the Two Month Notice. However, there is no evidence before me to indicate that the Tenant did so. As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the Two Month Notice, which was May 31, 2021. According to the Landlord, the Tenant continues to reside in the rental unit. Therefore, I find the Landlord is entitled to an order of possession, which will be effective March 31, 2022, at 1:00 p.m.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee.

Conclusion

The Landlord is granted an order of possession, which will be effective on March 31, 2022, at 1:00 p.m. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order of \$100.00 in recovery of the filing fee. The monetary order must be served on the Tenant. 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: March 15, 2022

Residential Tenancy Branch