



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT (Tenants)
 OPL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their Application for Dispute Resolution December 16, 2021 (the "Tenants' Application"). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 05, 2021 (the "Notice"). The Tenants also sought to recover the filing fee.

The Landlord filed their Application for Dispute Resolution December 21, 2021 (the "Landlord's Application"). The Landlord applied for an Order of Possession based on the Notice.

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlord provided affirmed testimony.

Rule 7.3 of the Rules 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.

Given the Tenants did not appear at the hearing, the Tenants' Application is dismissed without leave to re-apply.

The Tenants submitted the Notice and a tenancy agreement as evidence. The Landlord submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlord's Application.

The Landlord testified that the hearing package and their evidence were posted to the door of the rental unit December 24, 2021.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenants were served with the hearing package and evidence for the Landlord's Application in accordance with sections 88(g) and 89(2)(d) of the *Residential Tenancy Act* (the "Act") on December 24, 2021. Pursuant to section 90(c) of the *Act*, the Tenants are deemed to have received the hearing package and evidence December 27, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started February 14, 2020, and is a month-to-month tenancy. Rent is \$2,300.00 due on the first day of each month.

The Notice was submitted as evidence. The Notice submitted is not signed by the Landlord. The Notice has an effective date of February 28, 2022. The grounds for the Notice are that the rental unit will be occupied by the Landlord or Landlord's spouse.

The Landlord testified that the copy of the Notice served on the Tenants was signed by the Landlord.

The Landlord testified that the Notice was served on the Tenants in person December 05, 2021.

The Landlord testified that they intend to move into the rental unit with their spouse and two children. The Landlord testified that their family currently has only two bedrooms and needs more space. The Landlord testified that they intend to live in the rental unit for 10 years because their child goes to school across the street from the rental unit.

The Landlord sought an Order of Possession effective April 11, 2022, given an agreement already reached between the parties.

The Landlord asked for direction in relation to the compensation due to the Tenants pursuant to the Notice.

The Landlord submitted a Proof of Service, documentation about their child's school and photos of their current living situation.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Tenants had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. Based on the undisputed testimony of the Landlord and Proof of Service, I find the Tenants were served with the Notice December 05, 2021, in accordance with section 88(a) of the *Act*. The Tenants' Application was filed December 16, 2021, within time.

As stated, the Tenants' Application is dismissed without leave to re-apply. However, I still must consider the validity of the Notice and whether the Landlord has proven the grounds for the Notice because, pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I accept the undisputed testimony of the Landlord that they intend to move into the rental unit with their spouse and two children. I also accept the undisputed testimony of the Landlord that they intend to live in the rental unit for the next 10 years while their child goes to school across the street. I did not have any concerns about the reliability or credibility of the Landlord's testimony. Further, the Landlord has submitted documentary evidence to support their testimony. I find the Landlord has proven the grounds for the Notice.

I accept the undisputed testimony of the Landlord that the Notice served on the Tenants was signed by the Landlord. Given this, and upon review of the Notice, I find the Notice complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

The effective date of the Notice complies with section 49(2)(a) of the *Act*.

Given the above, I find the Notice is valid and uphold the Notice.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found the Notice complies with section 52 of the *Act*. I have also dismissed the Tenants' dispute of the Notice and upheld the Notice. The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 11, 2022.

Given the above, section 51(1) of the *Act* applies and states:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the

effective date of the landlord's notice **an amount that is the equivalent of one month's rent** payable under the tenancy agreement. (emphasis added)

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 11, 2022. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 29, 2022

Residential Tenancy Branch