



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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. On January 24, 2022, the Landlord applied for:

- an order of possession, having served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 29, 2021 (the Two Month Notice); and
- the filing fee.

The hearing began on time and was attended by only the Landlord, who was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified she served the Notice of Dispute Resolution Proceeding (NDRP) on the Tenant by registered mail on February 9, 2022, and submitted a tracking number and receipt as proof. Based on the Landlord's affirmed undisputed testimony and her documentary evidence, I find she served the NDRP on the Tenant in accordance with section 89 of the Act, on February 9, 2022. In accordance with section 90 of the Act, I deem the NDRP received by the Tenant on February 14, 2022.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to the filing fee?

Background and Evidence

The Landlord provided the following particulars of the tenancy. It began October 1, 2021; rent is \$975.00, due on the first of the month; and the Tenant paid a security deposit of \$425.00, which the Landlord still holds.

The Landlord testified that the Tenant still occupies the rental unit.

The Landlord testified she served the Two Month Notice on the Tenant in person on September 29, 2021, and submitted a proof of service form which documents the same.

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 the 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 testified that she intends to move into the rental unit. The Landlord testified that she had purchased the property for her retirement, and was getting older and needed to move into town.

Analysis

Based on the Landlord's affirmed undisputed testimony and the proof of service form, I find the Landlord served the Two Month Notice on the Tenant in person on September 29, 2021, in accordance with section 88 of the Act.

I find the Two Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form

Section 49(8)(a) of the Act provides that upon receipt of a Two Month Notice, the tenant may, within 15 days, dispute the Notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that the Tenant did not file an application for dispute resolution within 15 days of October 14, 2021 the deadline under section 49(8)(a) of the Act. Accordingly, I find that the Tenant is conclusively presumed under section 49(9) to have accepted that the tenancy ended on the effective date of the Two Month Notice, March 31, 2022, and must vacate the rental unit.

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

As the Landlord testified that the Tenant still occupies the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, April 25, 2022.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in her application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlord to retain \$100.00 of the Tenant's security deposit in satisfaction.

The security deposit for this tenancy is reduced by \$100.00 to \$325.00.

Conclusion

The Landlord's application is granted.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

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: April 26, 2022

Residential Tenancy Branch