



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

The Landlords apply for an order for possession pursuant to s. 55 of the *Residential Tenancy Act* (the “*Act*”) after issuing a Two-Month Notice to End Tenancy dated October 4, 2021 (the “Two-Month Notice”).

M.D. appeared as the Landlord. The Tenants did not attend, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the Two-Month Notice was posted to the Tenants’ door on October 4, 2021. I accept the Landlord’s undisputed evidence and find that the Two-Month Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Two-Month Notice on October 7, 2021.

The Landlord further advised that he served the Notice of Dispute Resolution by personally delivering it on the Tenant sometime in March 2022, though could not recall the specific date. The fact that the Landlord could not recall the specific date of service for the Notice of Dispute Resolution is not material and I accept that even had service been at the end of March 2022, the Tenants would still have been served in compliance with the timelines set out under the Rules of Procedure. I find that the Notice of Dispute Resolution was served in compliance with s. 89 of the *Act* by way of personal service in March 2022.

The Landlord admitted at the hearing that the Tenants were not served with the evidence provided by the Landlords to the Residential Tenancy Branch. As the evidence was not served, I do not include it into the record with the exception of the Two-Month Notice itself. I allow the inclusion of the Two-Month Notice on the basis that it had been previously served by it being posted to the Tenants' door and that it would not be prejudicial to the Tenants to include it into the evidentiary record.

Preliminary Issue – Amending the Application

The Landlord advised that the rental unit is a basement suite within a single detached home and that he and K.D. live upstairs. The application does not mention that the rental unit is a basement unit.

Under the circumstances, I find that it is appropriate to amend the application pursuant to Rule 4.2 of the Rules of Procedure on the basis that the error with respect to listing the rental unit as a basement suite was inadvertent and that the Tenants ought reasonably to have known that they are renting the basement suite. The amendment to indicate the rental unit is a basement suite is not prejudicial to the Tenants.

Issue(s) to be Decided

- 1) Are the Landlords entitled to an order for possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord advised that no written tenancy agreement exists with respect to the tenancy. However, the following details were confirmed during the hearing with respect to the tenancy:

- The Tenants took occupancy of the rental unit some five-years ago, with the Landlord being unable to recall the specific date but mentioning it could have been September 2016 or 2017.
- Rent of \$2,000.00 is payable on the first day of each month.

- A security deposit had been paid by the Tenants but had been returned to them by the Landlords due to financial issues faced by the Tenants at some point in the past. The Landlord indicated that the Tenants never repaid the security deposit.

As mentioned above, the Two-Month Notice was posted to the Tenants' door on October 4, 2021. The Two-Month Notice was issued on the basis that the rental unit would be occupied by a child of the Landlord or the Landlord's spouse. The Landlord confirmed that he did not receive an application from the Tenants disputing the Two-Month Notice.

The Landlord advised that the Tenants continue to reside within the rental unit. The effective date for the Two-Month Notice is listed as December 31, 2021. The Landlord further advised that the Tenants had indicated to him that they would be vacating the rental unit at the end of April 2022. The Landlord asked that if an order for possession is granted, it be effective for April 30, 2022.

Analysis

The Landlord seeks an order for possession after issuing a Two-Month Notice.

I have reviewed the Two-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-32).

In accordance with s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit. Pursuant to s. 51(1) of the *Act*, a tenant who receives a notice under s. 49 is entitled to compensation equivalent to one month's rent payable under the tenancy agreement on or before the effective date of the notice.

Pursuant to s. 49(8)(a), the Tenant had 15-days after receiving it to dispute the notice by filing an application with the Residential Tenancy Branch. Indeed, the top of the notice indicates the following:

HOW TO DISPUTE THIS NOTICE

You have the right to dispute this Notice **within 15 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Here, the Tenant failed to dispute the notice in the timeframe set out under the *Act*. Given this, s. 49(9) is engaged and I find that the Tenant is conclusively presumed to have accepted the Two-Month Notice and ought to have vacated the rental unit by the effective date of the notice, which in this case was December 31, 2021.

As the Tenant continues to reside within the rental unit, I find that the Landlord has established that he is entitled to an order for possession. I further accept the Landlord's request that the order for possession be made effective for April 30, 2022, which is the date the Landlord says that the Tenants said they would be leaving. The order for possession shall be effective on the date requested by the Landlord.

Conclusion

The Tenant failed to dispute the Two-Month Notice within 15-days of its receipt and is conclusively presumed to have accept the end of the tenancy. As the Tenant continues to reside within the rental unit after the effective date of the Two-Month Notice, I find that the Landlord is entitled to an order for possession.

I order pursuant to s. 55 of the *Act* that the Tenants shall provide vacant possession of the rental unit to the Landlords by no later than **1:00 PM on April 30, 2022**. The order for possession is effective on the date requested by the Landlord.

It is the Landlords' obligation to serve the order for possession on the Tenants. If the Tenants do not comply with the order for possession, it may be filed by the Landlords with the Supreme Court of British Columbia and enforced 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 *Residential Tenancy Act*.

Dated: April 26, 2022

Residential Tenancy Branch