



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPQ, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for possession under s. 55 after issuing a Two-Month Notice to End Tenancy signed August 18, 2021 (the “Two-Month Notice”); and
- An order pursuant to s. 72 for return of their filing fee.

L.C. appeared as property manager and agent for 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’s agent 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’s agent confirmed that he was not recording the hearing. The hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advises that the Two-Month Notice was served on the Tenants by way of registered mail sent on August 18, 2021. The Landlord provided tracking information the registered mail containing the Two-Month Notice was delivered on August 23, 2021. I find that the Two-Month Notice was served in accordance with s. 88 of the *Act*. Based on the tracking information provided, I find that Tenants received the Two-Month Notice on August 23, 2021.

The Landlord’s agent further advises that the Notice of Dispute Resolution and the Landlord’s evidence for the hearing was served on the Tenants by way of registered

mail sent on March 17, 2022. A registered mail tracking receipt for the application materials were put into evidence by the Landlord. I find that the Landlord served its application materials in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlord's application materials on March 22, 2022.

Issues to be Decided

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

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's agent confirms the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on September 2, 2011.
- Rent of \$412.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$165.00 in trust for the Tenants.

A copy of the written tenancy agreement was put into evidence by the Landlord.

The Two-Month Notice was issued under s. 49.1 of the *Act* on the basis that the Tenants no longer qualify for a subsidized rental unit. The Landlord's agent confirms that the Tenants did not file an application to dispute the Two-Month Notice as none was provided to the Landlord.

The Landlord's agent advised that the delay in enforcing the Two-Month Notice was due to the Landlord's practice of avoiding enforcement proceedings as much as possible. I was told that several deadlines to vacate were arranged. The Landlord's agent confirms that the Tenants continue to reside within the rental unit.

Analysis

The Landlord applies for an order for possession after issuing a Two-Month Notice under s. 49.1 of the *Act*.

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).

Under s. 49.1 of the *Act*, a landlord may end a tenancy for a subsidized rental unit where a tenant ceases to qualify by issuing a notice to end tenancy with 2 months notice. Pursuant to s. 49.1(5), a tenant may file an application to dispute a notice to end tenancy issued under s. 49.1 but must file the application within 15 days of receiving the notice. This point is made clear in the standard form 2-month notice to end tenancy, which states the following at the top of the page:

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.

I accept the Landlord's undisputed evidence that the Tenants did not file an application to dispute the Two-Month Notice. Based on this, s. 49.1(6) of the *Act* applies. I find that the Tenants are conclusively presumed to have accepted the end of the tenancy on the date of the effective notice and must have vacated the rental unit by that date.

As the Tenants continue to reside within the rental unit, I find that the Landlord is entitled to an order for possession pursuant to s. 55(2) of the *Act*.

I have considered the delay with respect to the Two-Month Notice being issued, the effective date of October 31, 2021, and the application being made on March 9, 2022. I accept the Landlord's evidence that attempts were made with the Tenants to avoid enforcement proceedings with the Residential Tenancy Branch. I consider the Landlord's practice to be commendable given the fact that they operate subsidized housing. I see no reason why the Landlord's good practice of attempting to come to alternate arrangements with the Tenants should prejudice their ability to enforce the Two-Month Notice, which is their right under the *Act*.

Conclusion

Pursuant to s. 55(2) of the *Act*, I order that the Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order for possession.

As the Landlord was successful in its application, I find that they are entitled to the return of their filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenants pay the Landlord's \$100.00 filing fee. I direct pursuant to s. 72(2) of the *Act* that the Landlord retain \$100.00 from the security deposit they hold for the Tenants in full satisfaction of their filing fee.

It is the Landlord's 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 Landlord 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: May 17, 2022

Residential Tenancy Branch