



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 6, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for landlord use of the property; and
- an order granting recovery of the filing fee.

The Landlord's Counsel G.F. and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the Tenants confirmed receipt of the Landlord's Application and documentary evidence. As such, I find that these documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenants confirmed that they submitted a copy of a tenancy agreement which they did not serve to the Landlord.

Preliminary Matters

At the start of the hearing, the Tenants expressed confusion as they do not know who the Landlord is. The Tenants stated that they have entered into a tenancy with another Landlord. The Tenants stated that they do not know the Landlord who has made the Application.

The Landlord's Counsel referred to a Supreme Court Decision dated December 7, 2021 in which the Court found that the Landlord named in the Application is declared the Landlord of the rental unit and has all the rights of a Landlord pursuant to the *Act*.

The Landlord's Counsel stated that a copy of the Supreme Court Decision was served to the Tenants. The Tenants confirmed receipt of the December 7, 2021 Supreme Court Decision. As such, I am satisfied that the parties are properly named in the Application

and that the Tenants were notified of the change of Landlord based on the Supreme Court Decision.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a Two Month Notice for Landlord's Use of the Property (the "Two Month Notice") dated December 23, 2021, pursuant to Section 49 and 55 of the Act?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The Landlord's Counsel stated that the Tenants have withheld a copy of the tenancy agreement, therefore, the Landlord is unaware of the current term of the tenancy agreement, if any. The Landlord's counsel stated that the Tenants continue to occupy the rental unit and have not paid any rent to the Landlord.

The Tenants provided a copy of the tenancy agreement between them and the previous Landlord. It states that the tenancy began on May 1, 2020 and continues on a month to month basis until ended in accordance with the Act. The Tenancy agreement has an end date of April 30, 2025, however, I note that the parties did not select the option of a fixed term tenancy on the tenancy agreement. According to the tenancy agreement provided by the Tenants, they are required to pay rent in the amount of \$3,580.00 to the Landlord on the first day of each month. The Tenants did not pay any deposits. The tenancy agreement was signed on May 1, 2020.

The Landlord's Counsel stated that the Landlord is seeking to move into the rental unit as they are currently without a home. The Landlord's Counsel referred to the Landlord's Affidavit in support. The Landlord's Counsel submits that he served the Tenants with the Two Month Notice on December 30, 2021 by posting the Two Month Notice on the door of the dispute address. A copy of the Two Month Notice dated December 23, 2021 with

an effective date of February 28, 2022 was submitted into evidence by the Landlord. The Landlords' reason for ending the tenancy on the Two Month Notice is;

"The rental unit will be occupied by the Landlord or the Landlord's Spouse"

The Tenants confirmed having received the Two Month Notice on December 30, 2021. The Tenants stated that they did not dispute the Two Month Notice as they are currently in a fixed term tenancy and that Landlord had previously tried to sell the rental property, therefore, the Two Month Notice is invalid.

Analysis

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

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlord's Counsel stated that the Landlord intends on occupying the rental unit, therefore requires vacant possession of the rental unit.

The Landlord's Counsel stated that he served the Tenants with the Two Month Notice on December 30, 2021. The Tenants confirmed having received the Two Month Notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

According to subsection 49(9) of the Act, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The Tenants stated that they did not apply to cancel the Two Month Notice as they were in a fixed term tenancy. I find that the tenancy agreement submitted by the Tenants does not state that the tenancy is a fixed term. Rather, the tenancy agreement states the tenancy began on May 1, 2020 and continues on a month to month basis until ended in accordance with the Act. I find that based on the tenancy agreement provided by the Tenants, that the tenancy is a periodic month to month tenancy.

The Tenants testified that they received the Two Month Notice on December 30, 2021. Therefore, the Tenants had until January 14, 2022 to make an Application for dispute resolution, or are conclusively presumed to have accepted the tenancy has ended on the effective date of the Two Month Notice, February 28, 2022.

As the Tenants did not apply to dispute the Two Month Notice in accordance with Section 49(8), I find that they are conclusively presumed to have accepted the end of the tenancy.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective **2 (two) days**, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

The Landlord and the Tenants should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenants the equivalent of 12 months' rent as a penalty.

As the Landlord was successful with their Application, I find that they are entitled to recovering the \$100.00 filing fee paid to make the Application. Pursuant to section 67 and 72 of the Act, I find the Landlord is entitled to a monetary order in the amount of **\$100.00**.

Conclusion

The Tenants have breached the Act by not complying with the Two Month Notice. The Landlord is granted an order of possession effective 2 (two) days, after service on the Tenants. The order should be served to the Tenants as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

As the Landlord was successful with their Application, I grant the Landlord a Monetary Order for \$100.00. In the event that the Tenants do not comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: June 22, 2022