



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPQ, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the *Residential Tenancy Act* (the “Act”) for an order of possession, and to recover the cost of the filing fee.

The landlord’s agent attended the hearing. The landlord’s agent gave affirmed testimony.

As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by posting to the door of the rental unit on April 14, 2022. I find the tenants were served in accordance with section 89(2) of the Act. I find the tenants were deemed served five days later, April 17, 2022.

The landlord’s agent stated that the tenants contacted them before the hearing, and they sent to the tenants the telephone information and access code for this hearing. The agent stated they were hopeful the tenants would call in to the hearing. I note the hearing lasted for 14 minutes and the tenants did not call in during that time.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord's agent testified that the tenants were served with a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, (the "Notice") issued on September 24, 2021. Filed in evidence is a copy of the Notice.

The landlord's agent testified that the Notice was served by registered mail sent on September 24, 2021. The agent stated the registered mail was returned unclaimed by the tenants. Filed in evidence is a copy of the registered mail tracking.

The landlord's agent testified that they have been trying to work with the tenants to have them provide the required documents needed to qualify for subsidized housing, even the day before the hearing; however, the tenants have not provided the required information. The landlord seek an order of possession.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (1)In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a)operated by a public housing body, or on behalf of a public housing body, and

(b)occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2)Subject to section 50 [*tenant may end tenancy early*] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3)Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

- (a)not earlier than 2 months after the date the notice is received,
- (b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4)A notice under this section must comply with section 52.

(5)A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

- (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b)must vacate the rental unit by that date.

I accept the evidence of the landlord's agent that the tenants were served with the Notice, sent by registered mail on September 24, 2021. I find the tenants were deemed served five days later on September 29, 2021. Refusal or neglect to pickup the package is not grounds for review.

I accept the evidence of the landlord's agent that they have been working with the tenants to have the tenants provided the required documents to meet the eligible requirements for subsidized housing and the tenants have failed to do so.

I have reviewed the Notice; I find the Notice complies with section 52 of the Act. I find the tenants were conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, which was November 30, 2021.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

As the landlord was successful with their application. I find the landlord is entitled to recover the cost of the filing fee from the tenants in the amount of \$100.00. I grant the landlord a monetary order, pursuant to section 67, and 72 of the Act. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims). The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted an order of possession.

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: July 29, 2022

Residential Tenancy Branch