



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 May 3, 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 February 28, 2022 (the Two Month Notice); and
- the filing fee.

The hearing began on time and was attended by only the landlord and her relative (LR), who was present to assist with translation. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were 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 in person on May 19, 2022. The landlord testified the tenant refused to open the door, and instructed the landlord to leave the NDRP on a table by the door. The landlord testified she told the tenant what the document was.

Based on the landlord's affirmed undisputed testimony, I find she served the NDRP on the tenant in person in accordance with section 89 of the Act, and that the tenant received it the same day.

Issues to be Decided

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

Preliminary Matter

The dispute listed the same address for the landlord and the tenant, but the Two Month Notice included different unit information for the landlord and the tenant. As the landlord confirmed she did not share a kitchen or bathroom with the tenant, I found the Act applied to the tenancy and proceeded with the hearing. I have added the tenant's unit information from the Two Month Notice to the cover page of this decision and to the order. This amendment is in accordance with section 64(3)(c) of the Act.

Background and Evidence

The landlord provided the following particulars of the tenancy. It began in 2019; rent is \$900.00, paid directly to the landlord by the government; and the tenant paid a security deposit of \$500.00, which the landlord still holds.

The landlord testified that the tenant still occupies the rental unit.

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.

The landlord testified she served the Two Month Notice on the tenant in person on February 28, 2022, and submitted a witnessed proof of service form. The service date on page 1 of the proof of service form is blank, but the form indicates the Notice was served at 3:45 p.m. Page 2 notes that the Notice was served on February 27, 2022. When I asked the landlord about the date discrepancy, she testified that the date of February 27 on the proof of service form was correct, and that her earlier testimony that the Notice had been served on February 28, and the date of February 28 on the Notice were in error; the Two Month Notice should have been dated February 27, 2022.

In the hearing, the landlord testified that she served the Two Month Notice on the tenant because her daughter is going to be moving into the unit. I asked the landlord, if the intention is for her daughter to reside in the unit, why the Two Month Notice indicated that the unit will be occupied by the landlord or the landlord's spouse. The landlord testified that she had not understood, and checked the wrong item in error.

During the hearing, the landlord's relative did most of the speaking on the landlord's behalf, and assisted the landlord with translation.

Analysis

I accept the landlord's affirmed undisputed testimony that the Two Month Notice was served on the tenant in person on February 27, 2022, as indicated on the witnessed proof of service form, and that the Notice was dated February 28 in error, and should have been dated February 28, 2022.

Based on the landlord's testimony and the proof of service form, I find the landlord served the Two Month Notice on the tenant in person on February 27, 2022, in accordance with section 88 of the Act, and that the tenant received it the same day.

The landlord testified that she served the Two Month Notice because her daughter will be moving into the unit, but the Notice indicates the unit will be occupied by the landlord or the landlord's spouse, which the landlord testified was an error due to her misunderstanding the form. I note that the landlord had a relative attend the hearing with her to assist with translating.

Here are the choices on the Two Month Notice submitted as evidence:

As “the landlord or the landlord’s spouse” and “the child of the landlord or landlord’s spouse” both fall under the first of the four reasons for the Two Month’s Notice, I find that the landlord has been consistent in indicating one reason for the service of the Two Month Notice on the tenant, that being that the rental unit will be occupied by the landlord or the landlord’s close family member.

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 February 27, 2022, 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, April 30, 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, September 13, 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.

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: September 22, 2022

Residential Tenancy Branch