



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing dealt with the Landlord's application under the Residential Tenancy Act (the "Act") for:

- an Order of Possession under a Two Month Notice to End Tenancy for Landlord's Use dated July 20, 2022 (the "Two Month Notice"), pursuant to section 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agent JL attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:47 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord's agent and I were the only ones who had called into the hearing.

I informed JL that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

JL confirmed that she sent the notice of dispute resolution proceeding package and the Landlord's documentary evidence (collectively, the "Original NDRP Package") to the Tenant by registered mail on September 8, 2022. The Landlord submitted a registered

mail receipt with a tracking number in support (first of three tracking numbers referenced in the cover page of this decision). Tracking records show that the Original NDRP Package was delivered on September 13, 2022. Based on the foregoing, I find the Tenant was served with the Original NDRP Package on September 13, 2022 in accordance with sections 88(c) and 89(2)(b) of the Act.

Records of the Residential Tenancy Branch (the “RTB”) indicate that the hearing scheduled as per the Original NDRP Package was rescheduled by the RTB to this hearing. The RTB provided the Landlord with a revised notice of dispute resolution proceeding package on October 20, 2022 (the “Revised NDRP Package”).

JL confirmed she sent the Revised NDRP Package to the Tenant via registered mail on October 21, 2022. The tracking number for this package is the second tracking number indicated on the cover page of this decision. JL testified that on October 31, 2022, she sent a WeChat message to the Tenant advising him of the rescheduled hearing and reminded him to pick up the Revised NDRP Package which she had sent on October 21, 2022. JL testified the Tenant refused to respond and did not pick up the Revised NDRP Package, which was eventually returned to JL as unclaimed. JL testified she then went to the rental unit on November 14, 2022 and found the Tenant still residing there. JL testified the Tenant opened the door when she knocked, and she asked the Tenant why he did not pick up the Revised NDRP Package, but the Tenant refused to answer.

Residential Tenancy Policy Guideline 12. Service Provisions states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Based on JL’s undisputed testimony, I find the Tenant refused to pick up the Revised NDRP Package which was sent to him via registered mail. As such, I find the Tenant was served with the Revised NDRP Package in accordance with section 89(2)(b) of the Act, and pursuant to section 90(a) of the Act, the Tenant is deemed to have received the Revised NDRP Package on October 26, 2022, or 5 days after mailing.

Preliminary Matter – Tenant’s Non-attendance

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Having found the Tenant to be deemed served with notice of this hearing, I directed that the hearing be conducted in the Tenant’s absence.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession under the Two Month Notice?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on October 5, 2021 and is month-to-month. Rent is \$2,600.00 due on the first day of each month. The Tenant paid a security deposit of \$1,300.00 which is held by the Landlord. A copy of the tenancy agreement has been submitted into evidence.

A copy of the Two Month Notice has also been submitted into evidence. The Two Month Notice is signed by the Landlord and has an effective date of September 30, 2022. The stated reason for ending the tenancy is that the “rental unit will be occupied by the landlord or the landlord’s close family member”, in this case, the “father or mother of the landlord or landlord’s spouse”. JL confirmed that it is the Landlord’s father who intends to occupy the rental unit.

JL testified that a copy of the Two Month Notice was sent to the Tenant via registered mail on July 25, 2022. The Landlord submitted a registered mail receipt with tracking number in support (the third tracking number indicated on the cover page of this decision). Tracking records show that this package was delivered on July 26, 2022.

JL confirmed that the Tenant was still residing in the rental unit when she visited on November 14, 2022. JL testified the Tenant permitted her to take some photographs of the rental unit which show that the Tenant's belongings are still inside.

Analysis

1. Is the Landlord entitled to an Order of Possession under the Two Month Notice?

Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit.

Section 49(7) of the Act requires a notice to end tenancy under section 49 to comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

I have reviewed the Two Month Notice and find that it complies with the requirements of section 52 in form and content.

Based on the Landlord's undisputed evidence, I find the Tenant was served with the Two Month Notice on July 26, 2022, in accordance with section 88(c) of the Act.

Section 49(8) of the Act permits a tenant to dispute a two month notice to end tenancy under section 49(3) within 15 days after receiving such notice. Therefore, the Tenant had until August 10, 2022 to make an application for dispute resolution. I find the Tenant did not apply to dispute the Two Month Notice by August 10, 2022 or at all.

Section 49(9) of the Act states that if a tenant who has received a notice under section 49 does not make an application for dispute resolution in accordance with section 49(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.

Furthermore, sections 55(2)(b) and 55(4) of the Act state as follows:

Order of possession for the landlord

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the Two Month Notice was served on July 26, 2022, the time for disputing the Two Month Notice expired on August 10, 2022, and the Tenant did not apply to dispute the Two Month Notice by that date or at all. I find the Tenant is conclusively presumed to have accepted that the tenancy ended on September 30, 2022, and that the Landlord is entitled to an Order of Possession pursuant to section 55(4)(a) of the Act.

Since the effective date of the Two Month Notice (September 30, 2022) has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

2. Is the Landlord entitled to recover the filing fee?

The Landlord has been successful in this application. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to deduct \$100.00 from the security deposit held by the Landlord in full satisfaction of the amount awarded in this application.

Conclusion

The Landlord is successful in this application.

Pursuant to section 55(4)(a) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to deduct **\$100.00** from the Tenant's security deposit on account of the filing fee awarded in this application. The balance of the Tenant's security deposit must be dealt with in accordance with the Act, the regulation, and the parties' tenancy agreement.

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: December 01, 2022

Residential Tenancy Branch