



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy for the Landlord’s Use pursuant to section 49
- for reimbursement of the filing fee pursuant to section 72 of the Act

The tenants KS and KS, appeared. The landlord did not appear.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated August 27, 2022, with an effective date of October 31, 2022. The tenants were properly served pursuant to section 88 of the Act.

Service of Tenants’ Materials

The tenants stated that they applied for and received an order allowing substitutional service of the dispute notice and evidence by email. The order was granted October 3, 2022 and allowed the tenants to serve the landlords by email. The tenants stated that they sent an email to the landlords including the dispute notice and supporting materials on September 21, 2022.

The tenants did not provide any proof of service for their service by email. They stated that the landlord has not responded to or communicated with them by email since prior to September 21, 2022.

I find that the tenants failed to serve the landlord in accordance with the Act. There is no proof of service, and the tenants have not received a response by email from the landlords since prior to September 21, 2022. Further, the tenants served the landlord by email on September 21, 2022 and the order allowing for substitutional service was not granted until October 3, 2022. There was no order in place that allowed for substitutional service on September 21, 2022.

The tenants' application is therefore dismissed.

The Two Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the Two Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession for the rental unit effective January 31, 2023 at 1:00pm.

As the tenants were unsuccessful in their application, they are not entitled to recover the filing fee.

Conclusion

The tenants' application is dismissed.

The landlord is granted an order of possession which will be effective January 31, 2023 at 1:00pm. The order of possession must be served on the tenant. The order of possession may be filed in 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: January 26, 2023