



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, FFL

Introduction

The hearing was convened in response to an Application for Dispute Resolution filed by the Landlords, in which the Landlords applied for an Order of Possession for Landlord's Use of Property and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that on October 27, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on October 12, 2022 was served to the Tenant, by sending it to the rental unit via registered mail. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

On October 28, 2022 the Landlords submitted an Amendment to the Application for Dispute Resolution, although it does not declare how the Application for Dispute Resolution is being amended. The male Landlord stated that the Landlords did not intend to amend the Application for Dispute Resolution. As such, I find that that Application for Dispute Resolution has not been amended.

On January 31, 2023 the Tenant submitted evidence to the Residential Tenancy Branch. The male Landlord stated that the Tenant did not serve them with evidence for these proceedings. As the Tenant did not attend the hearing to establish service of these documents, the evidence was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession?

Background and Evidence

The male Landlord stated that this tenancy began on April 01, 2014; that rent is due by the first day of each month; and that rent for February of 2022 has been paid.

The male Landlord stated that the Two Month Notice to End Tenancy for Landlord's Use was mailed to the Tenant, via registered mail, on July 18, 2022. Canada Post documentation submitted supports this submission.

The Two Month Notice to End Tenancy for Landlord's Use declares that the unit will be occupied by the Landlords' mother and father and that the unit must be vacated by September 30, 2022. The male Landlord stated that his mother and father will be moving into the rental unit.

The Notice to End Tenancy informed the Tenant that they must move out of the rental unit by the date set out on the front page of the Notice if they do not dispute the Notice within fifteen days of receiving it. I have no evidence that the Tenant disputed the Notice to End Tenancy.

Analysis

Section 49(3) of the *Act* stipulates that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the male Landlord's undisputed testimony that their mother and father will be living in the unit, I find that the Landlords have grounds to end the tenancy pursuant to section 49(3) of the *Act*.

In the absence of evidence to the contrary, I find that on July 21, 2022 the Tenant is deemed to have received the Two Month Notice to End Tenancy for Landlord's Use that was mailed to the Tenant on July 18, 2022, pursuant to section 90 of the *Act*.

Section 49(8) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 49 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within 15 days of receiving it.

As there is no evidence that the Tenants filed an application to dispute the Notice to End Tenancy, I find that the Tenants accepted that the tenancy was ending on February 28, 2009, pursuant to section 47(5) of the *Act*.

I find that the Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlords an Order of Possession that is effective at 1:00 p.m. on February 28, 2023. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim in the amount of \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution and I grant the Landlord a monetary Order for \$100.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: February 03, 2023

Residential Tenancy Branch