



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 and one of the Tenants, SE, attended this hearing and gave affirmed testimony.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed that copies of the notice of dispute resolution proceeding package (the "NDRP Packages") were sent to the Tenants via registered mail. SE acknowledged receipt of the NDRP Packages by the Tenants.

SE stated that the Tenants did not receive any documentary evidence from the Landlord with the NDRP Packages. The Landlord stated she believed that she had included her documentary evidence in the NDRP Packages. The parties agreed that they all have copies of the Two Month Notice. Therefore, of the documentary evidence submitted by the Landlord, I will only consider and refer to the Two Month Notice for the purposes of

this application. I find it is not necessary for me to consider the other documentary evidence submitted by the Landlord.

SE confirmed that the Tenants did not submit any documentary evidence for this hearing.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to reimbursement of 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 August 15, 2017 and is month-to-month. Rent is \$838.00 due on the first day of each month. The Tenants paid a security deposit of \$425.00. There is no written tenancy agreement.

The Two Month Notice is signed by the Landlord and has an effective date of December 31, 2022. The 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”. According to the Landlord, the Two Month Notice was left in the Tenants’ mailbox on October 26, 2022. The Landlord confirmed that her parents have returned from abroad and intend to occupy the rental unit. The Landlord expressed that she would be agreeable for the Tenants to stay until April 30, 2022.

SE confirmed the Tenants received the Two Month Notice on October 26, 2022. SE acknowledged the Tenants did not make an application to dispute the Two Month Notice. SE explained that the parties had a prior dispute resolution proceeding on September 27, 2022, regarding another two month notice to end tenancy issued by the Landlord in May 2022. The Residential Tenancy Branch issued a decision in the Tenants’ favour on October 11, 2022 (the “Previous Decision”). According to SE, the Tenants were told that they did not need to dispute the Two Month Notice and that the tenancy would continue. SE stated that they later called the Residential Tenancy

Branch again and were told that they were too late to apply to dispute the Two Month Notice, since the Landlord had already made this application. SE argued the Landlord is still not issuing the Two Month Notice in good faith. SE stated that she does not believe the Landlord's parents will move into the rental unit. SE expressed that it was not fair for the Tenants to be evicted. SE stated that the Tenants have paid for their use of the rental unit and would need more time to find another place.

Analysis

1. Is the Landlord entitled to an Order of Possession?

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. I find the effective date of the Two Month Notice would have provided the Tenants with two clear months' notice and complies with the requirements of section 49(2)(a) of the Act.

Based on the parties' testimonies, I find the Tenants were served with the Two Month Notice on October 26, 2022, in accordance with section 88(f) of the Act.

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy within 15 days after receiving such notice. Therefore, the Tenants had until November 5, 2022 to make an application for dispute resolution. I find the Tenants did not apply to dispute the Two Month Notice by November 5, 2022 or at all.

I note that if the Tenants had made an application to dispute the Two Month Notice despite being late, and had sought more time to dispute the Two Month Notice, I would have had discretion under section 66 of the Act to consider extending the time limit established under section 49(8)(a) of the Act. However, there is no application made by the Tenants before me.

I further note SE's testimony that the Tenants were told to disregard the Two Month Notice due to the outcome of the Previous Decision. I find the Previous Decision could not have possibly stated anything about the Two Month Notice, which was issued after the Previous Decision was rendered.

In addition, the top of page 1 of the Two Month Notice clearly states:

Tenant: This is a legal notice that could lead to you being evicted from your home

HOW TO DISPUTE THIS NOTICE

You have the right to dispute this Notice **within 15 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 – 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

(emphasis underlined)

Under section 49(9) of the Act, if a tenant who has received a two month notice to end tenancy for landlord's use of property does not make an application for dispute resolution within 15 days of receiving it, 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.

Based on the foregoing, I find the Tenants are conclusively presumed to have accepted that the tenancy ended under the Two Month Notice.

Where a tenant does not dispute a notice to end tenancy and does not move out of the rental unit, sections 55(2)(b) and 55(4) of the Act allow the landlord to apply for an order of possession of the rental unit 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.

(emphasis underlined)

In this case, I have found the Two Month Notice was received by the Tenants on October 26, 2022, the time for disputing the Two Month Notice expired on November 5, 2022, and the Tenants did not apply to dispute the Two Month Notice by that date or at all. I find the Tenants are conclusively presumed to have accepted that the tenancy ended on December 31, 2022, the effective date of the Two Month Notice. Therefore, I find the Landlord is entitled to an Order of Possession pursuant to section 55(4)(a) of the Act, without any further dispute resolution process.

According to Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, where the effective date on the notice to end tenancy has already passed, effective dates for orders of possession have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided. Relevant factors include the point up to which the rent has been paid and the length of the tenancy.

Here, the effective date of the Two Month Notice has already passed. I accept the Tenants have continued to pay for their use of the rental unit and would be willing to pay

in order to stay a bit longer. I find the Landlord agreed to an Order of Possession effective April 30, 2023. Therefore, pursuant to section 55(4) of the Act, I grant the Landlord an Order of Possession effective 1:00 pm on April 30, 2023.

I take this opportunity to remind the parties that pursuant to section 51(1) of the Act, a tenant who receives a two month notice to end tenancy for landlord's use of property is entitled to receive from the landlord, on or before the effective date of the notice, an amount equal to one month's rent payable under the tenancy agreement. If the Landlord has not yet compensated the Tenants with one month's free rent, the Landlord must make arrangements to do so forthwith.

2. Is the Landlord entitled to reimbursement of 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 Tenants' \$425.00 security deposit in full satisfaction of the amount awarded.

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 **1:00 pm on April 30, 2023**. The Tenants must be served with this Order as soon as possible. Should the Tenants 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 Tenants' security deposit on account of the filing fee awarded in this application. The balance of the Tenants' security deposit must be dealt in accordance with the Act and the regulations.

Pursuant to section 51(1) of the Act, a tenant who receives a two month notice to end tenancy for landlord's use of property is entitled to receive from the landlord, on or before the effective date of the notice, an amount equal to one month's rent payable under the tenancy agreement. If the Landlord has not yet compensated the Tenants with **one month's free rent**, the Landlord must make arrangements to do so forthwith.

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: March 31, 2023

Residential Tenancy Branch