



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPL, FFL**

Introduction

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

- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord KB and the tenant FW with witness TV appeared.

The hearing was conducted by conference call. The parties were reminded to not record 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 tenant confirmed receipt of the Two Month Notice to End Tenancy for Landlord’s Use (“Two Month Notice”) dated August 27, 2022, with an effective date of October 31, 2022. The tenant further confirmed receipt of the dispute notice and the landlord’s materials. Document service complies with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the Two Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced July 15, 2020 and is currently month to month. Rent is \$1,979.25 due on the 15th day of the month. The landlord holds a security deposit of \$975.00 in trust for the tenant. The tenant still occupies the rental unit.

The tenant did not dispute the Two Month Notice as she stated she has found a new place and is vacating the rental unit. The parties agreed that the tenant would vacate the rental unit on March 31, 2023 at 1:00 pm. However, the landlord did not agree that the tenant is entitled to one month's rent. The tenant stated that she is entitled to one month's rent.

Analysis

Section 49(6) of the Act states that if the tenant does not make an application disputing the Two Month Notice, the tenant is conclusively presumed to accept that the tenancy has ended. Additionally, the parties agree that the tenant would vacate the rental unit. The landlord is entitled to an order of possession. However, the parties could not come to a complete meeting of the minds and reach a settlement of the dispute regarding the one month's free rent for the tenant.

I grant the landlord an order of possession effective April 14, 2023, as rent is due on the 15th of each month, and section 49(2)(a)(ii) requires that the effective date of the notice is the day before rent is due.

Section 51(1) and section 51(1.1) of the Act state that the tenant is entitled to one month's rent as a result of receiving a Two Month Notice and is entitled to withhold the last month's rent as compensation. The tenant is therefore entitled to withhold the last month's rent or otherwise seek compensation from the landlord. The tenant is entitled to a monetary order in the amount of \$1,979.25 for one month's rent.

As the landlord was only partially successful in her application, she is not entitled to the return of the filing fee for the application.

Conclusion

The landlord is granted an order of possession which will be effective April 14, 2023, at 1:00 pm. 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.

The tenant is granted a monetary order for \$1,979.25 in recovery of one month's rent. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 14, 2023

Residential Tenancy Branch