



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order of possession of the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued to the tenant.

The landlord and the tenant attended the hearing and were affirmed.

The landlord submitted evidence and testimony that they served the tenant their application for dispute resolution, evidence, and Notice of Hearing (application package) by attaching it to the tenant's door on December 15, 2022. The landlord submitted a witnessed, signed statement on a Residential Tenancy Branch (RTB) form, showing that the application package was attached to the tenant's door at 5:20 pm on December 15, 2022.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the submissions are reproduced here; further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

At the beginning of the hearing, the tenant immediately requested an interpreter/translator as they did not speak or understand much English.

I informed the tenant that the RTB did not provide translation services and the hearing would proceed.

The tenant did not appear to understand much of what I said or asked during the hearing, and I was challenged to understand what the tenant said during the hearing.

I elected to proceed with the hearing as the landlord's evidence showed that the tenant was served with the landlord's application on December 15, 2022, and the tenant had from that date to March 21, 2023, to arrange for an interpreter to attend the hearing with the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit as a result of the 2 Month Notice being issued to the tenant?

Background and Evidence

The written tenancy agreement filed in evidence by the landlord shows that the tenancy began on April 7, 2021, for a fixed-term ending on April 7, 2022, and a monthly rent of \$1,500.42.

As to the 2 Month Notice filed in evidence, the landlord submitted that the tenant was served with the Notice on October 9, 2022, by placing the Notice in the tenant's mailbox. The landlord submitted a witnessed, signed statement on a RTB form, showing that the 2 Month Notice was placed in the tenant's mailbox at 4:45 pm on October 9, 2022. The landlord submitted that they had a key to the tenant's mailbox as well as a fob to the mailroom, allowing access to the mailbox. The rental unit is located in a condo building.

The reason listed on the Notice for ending the tenancy was that the rental unit will be occupied by the landlord or landlord's spouse. The effective date of the Notice was December 31, 2022.

The evidence at the hearing from the landlord was that the tenant did not pay the monthly rent for March 2023 and the landlord acknowledged that the tenant was entitled to a month's rent as compensation under the 2 Month Notice provisions under the Act.

If an order of possession was issued to the landlord, the landlord was agreeable to extend the tenancy until March 31, 2023.

The landlord testified that they intended on moving into the rental unit.

The tenant denied receiving the Notice. The tenant filed no evidence before the hearing.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I find the landlord submitted sufficient evidence to prove the tenant was served with the Notice as declared by the landlord on October 9, 2022, by placing the Notice in the tenant's mailbox. While the tenant said they did not receive the Notice, I find that with the landlord's documentary evidence of a witnessed and signed proof of service and their affirmed testimony, the landlord has proven the service of the Notice to the tenant on a balance of probabilities.

The 2 Month Notice listed an effective move-out date of December 31, 2022 and the undisputed evidence is that the tenant has not vacated or paid the monthly rent for March 2023.

The Notice served on the tenant sets out that the tenant had fifteen (15) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such an application within 15 days, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, December 31, 2022.

I have no evidence before me that the tenant filed an application in dispute of the Notice. I therefore find the tenant is conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or December 31, 2022.

I have reviewed the Notice and find it was completed in accordance with section 49 of the Act and was on the approved form with content meeting the statutory requirements under section 52 the Act.

I therefore **order** the tenancy ended on December 31, 2022.

At the hearing, the landlord agreed the tenancy could continue until the end of March 2023, in recognition that the tenant is entitled to compensation equivalent to one month's rent. I find the landlord is entitled to and I **grant an order of possession of the rental unit (Order)**, pursuant to section 55(2)(b) of the Act, effective at 1:00 pm on March 31, 2023.

The tenant must be served the Order under any method approved by section 88 of the Act to be effective. If the tenant fails to voluntarily comply by vacating the rental unit immediately, the Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

The tenant is cautioned that costs of such enforcement, **such as bailiff costs and filing fees**, are recoverable from the tenant.

Conclusion

The tenancy has been ordered ended on December 31, 2022.

The landlord's application for an order of possession of the rental unit is granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 21, 2023

Residential Tenancy Branch