



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, FFL**

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on November 1, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for landlord use of the property.

The hearing was scheduled for 9:30 AM on March 14, 2023 as a teleconference hearing. The Landlord, the Landlord's Agent D.M., and the Landlord Interpreter Z.F. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that Landlord, the Landlord's Agent, the Landlord's Interpreter, and I were the only persons who had called into this teleconference.

The Landlord's Agent stated that the Notice of Hearing and documentary evidence was sent to the Tenant by Canada Post Registered Mail on January 17, 2023. The Landlord provided pictures of the envelope as well as a copy of the Registered Mail receipt in support. Pursuant to Section 89 and 90 of the Act, I find that the Tenant is deemed to have been served with these documents five days later, on January 22, 2023.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a Two Month Notice for Landlord's Use of the Property (the "Two Month Notice") dated August 15, 2022, pursuant to Section 49 and 55 of the Act?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The Landlord's Agent submits the following; the tenancy began on September 1, 2019. The Tenant is required to pay rent in the amount of \$1,050.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$525.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlord's Agent stated that the Tenant was served with the Two Month Notice on August 15, 2022 after it was posted to the Tenant's door. The Landlord provided pictures and a proof of service document in support. The Landlords' reason for ending the tenancy on the Two Month Notice is;

"The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The Landlord's Agent submits that the Landlord's mother-in-law intends to occupy the rental unit once the Landlord gains vacant possession. The Landlord's Agent stated that the Landlord's mother-in-law intends to occupy the rental unit for at least six months. The Landlord's Agent referred to a letter of support from the social worker that is caring for the Landlord's Mother-in-law. The letter refers to the Mother-in-law's challenges with stairs and therefore would benefit from residing in the ground floor rental unit.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good

faith to occupy the rental unit. The Landlord's Agent stated that the Landlord's mother-in-law intends on occupying the rental unit, therefore require vacant possession of the rental unit.

The Landlord posted the Two Month Notice to the Tenant's door on August 15, 2022. Therefore, I find the Two Month Notice was sufficiently served pursuant to Section 88 and 90 of the Act and that the Tenant is deemed to have been served with the Two Month Notice three days later, on August 18, 2022.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

According to subsection 49(9) of the Act, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

In this case, the Tenant is deemed to have been served with the Two Month Notice on August 18, 2022. Therefore, the Tenant had until September 2, 2022 to make an Application for dispute resolution, or is conclusively presumed to have accepted the tenancy has ended on the effective date of the Two Month Notice.

As the Tenant did not apply to dispute the Two Month Notice in accordance with Section 49(8), I find that they are conclusively presumed to have accepted the end of the tenancy.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Landlord and the Tenant should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty. As the Landlord was successful with their Application, I find that they are entitled to recovering the \$100.00 filing fee paid to make the Application. I order that the Landlord retain \$100.00 from the Tenant's security deposit held.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy based on the Two Month Notice. The Landlord is granted an order of possession effective 2 (two) days, after service on the Tenant. The order should be served to the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is permitted to retain \$100.00 from the Tenant's security deposit for reimbursement of the filing fee.

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