



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 (“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

Landlord’s agent GS appeared. Tenant WB appeared along with advocate JSA. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

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.

The tenant confirmed receipt of the Two Month Notice to End Tenancy for Landlord’s Use (“Two Month Notice”) dated July 29, 2022 with an effective date of October 1, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance 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? 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 on June 18, 2018, and is currently on a month to month basis. Rent is \$1,200.00 per month due on the first of the month. The landlord holds a security deposit of \$600.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that they require the rental unit for the landlord's father. The landlord served the Two Month Notice on the tenant, and the tenant subsequently requested that the landlord extend the effective date of the notice to allow him more time to find a new place to live. The parties agreed that any further money paid by the tenant would be for use and occupancy only.

The tenant did not dispute the Two Month Notice. The tenant testified that the landlord by accepting money for use and occupancy for 7 months effectively created a new tenancy. The use and occupancy receipts were provided in evidence.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 55 of the Act states in part:

(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:

- (a)a notice to end the tenancy has been given by the tenant;
- (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

There is evidence before me consisting of monthly documents signed by both the landlord and tenant and stating that the money paid is for use and occupancy only. While the use and occupancy arrangements continued for 7 months, I find that it was always clear between the parties that the tenant's payments were for use and occupancy as both parties signed a monthly document stating use and occupancy only. I find that the fact that the landlord referred to the tenant as "tenant" does not alter the fact that money was taken by the landlord for use and occupancy and always intended to enforce the Two Month Notice. Based on section 55 of the Act, the landlord's application is granted and an order of possession for the rental unit dated June 30, 2023 at 1:00pm will issue.

As the landlord is successful in her application, she is also entitled to recover the \$100.00 filing fee for the application.

I remind the parties that the order of possession is granted pursuant to the Two Month Notice. Therefore, the tenant is entitled to receive one month's free rent as compensation based on section 51 of the Act.

Conclusion

The landlord is granted an order of possession which will be effective June 30, 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 landlord is also permitted to deduct \$100.00 from the tenant's security deposit in satisfaction 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: June 06, 2023