



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. on December 8, 2023 concerning an application made by the landlords seeking an order of possession for landlord's use of property and to recover the filing fee from the tenant for the cost of the application.

Both named landlords attended the hearing with Legal Counsel and a witness ready to testify. One of the landlords gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlords have provided a Proof of Service document stating that the tenant was served with the Notice of Dispute Resolution Proceeding and all other required documents by registered mail on November 15, 2023, and the landlords have provided a copy of a Canada Post cash register receipt bearing that date and a tracking number. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord testified that the landlords' evidentiary material was served in person to the tenant on November 23, 2023, with the exception of late evidence which was uploaded to the Residential Tenancy Branch automated system the day of the hearing. The landlords have provided a Proof of Service document with a witness signature, and I am satisfied that the tenant has been served with the landlords' evidentiary material in accordance with the law, with the exception of the late evidence, which is not considered in this Decision. All other evidence of the landlords has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the Two Month Notice to End Tenancy For Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed-term tenancy began on November 1, 2022 and reverted to a month-to-month tenancy after October 31, 2023 and the tenant still resides in the rental unit. Rent in the amount of \$1,800.00 is payable on the 1st day of each month. A tenancy agreement "renewal" has been provided for this hearing, and the landlord testified that the landlords collected a security deposit from the tenant in the amount of \$1,800.00 on October 25, 2021 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a full house with a basement suite.

The landlord further testified that on August 31, 2023 the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) in person, in the presence of the landlord's spouse and daughter. A copy of the Notice has been provided for this hearing and it is dated August 31, 2023 and contains an effective date of vacancy of November 1, 2023. The reason for issuing it states: 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), specifying the child of the landlord or landlord's spouse. The landlord testified that the landlords' daughter is getting married and needs to occupy the rental unit.

The tenant has not served the landlords with an application disputing the Notice and the landlords seek an order of possession.

Analysis

The *Residential Tenancy Act* states that once served with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the tenant has 15 days to dispute it by filing and serving the landlord with the application and a Notice of Dispute Resolution Proceeding. If the tenant does not do so, the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*.

I accept the undisputed testimony of the landlord that the tenant has not served the landlords with any documentation disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an order of possession.

I also find that the effective date of the Notice is changed to October 31, 2023, considering that the Notice was served in person on August 31, 2023 and rent is payable on the 1st day of each month. Since the corrected date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession which may be filed in the Supreme Court of British Columbia for enforcement.

Since the landlords have been successful with the application the landlords are also entitled to recover the \$100.00 filing fee from the tenant. I grant a monetary order in favour of the landlords as against the tenant in that amount. The tenant must be served with the order, and I order that the landlords be permitted to keep that amount from the security deposit held in trust, or may file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlords effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlords may keep that amount from the security deposit held in trust, or may otherwise recover it.

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: December 08, 2023

Residential Tenancy Branch