

DECISION

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear crossed applications.

The Tenants' October 31, 2023 application (file number ending in 658) pursuant to the Act is for:

- Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act

The Landlord's October 27, 2023 application (file number ending in 285) pursuant to the Act is for:

- An order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Two Month Notice), pursuant to sections 49 and 55;
- Authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord acknowledges service during the hearing, and is duly served in accordance with the Act.

The Tenant acknowledges service during the hearing, and is duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Facts and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant in my decision.

Both parties agree that this tenancy started on January 15, 2022, with a monthly rent of \$1,650 due on the first day of each month, with a \$850.00 security deposit paid on January 15, 2022.

Both parties agree that the Landlord issued a Two Month Notice (the Notice) to end tenancy. The Notice was signed on October 6, 2023, with a move-out date of December 15, 2023. The Notice indicates that the reason for the Two Month Notice is because the rental unit will be occupied by the Landlord or the Landlord's spouse.

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 49 of the Act states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the Act states that upon receipt of a Notice to End Tenancy for landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

During the hearing, I understood that the Tenant received the Two Month Notice by Registered Mail on October 18, 2023. However, after the hearing, I searched the Canada Post database for the tracking number provided by the Landlord in their proof of service form for the Two Month Notice (the tracking number is listed on the cover page of this decision); I found that the Landlord had sent the Two Month Notice on October 6, 2023 – consistent with the signing date on the Two Month Notice. I observe that that the Two Month Notice was available for pickup on October 10, 2023 – something I was not aware of during the hearing. The Tenant did not pick up the Two Month Notice until October 18, 2023, and did not apply to dispute the Two Month Notice until October 31, 2023.

Section 90(a) of the Act deems that documents sent by mail are received on the fifth day after mailing. The Tenant delayed picking up the Two Month Notice for 8 days, then further delayed in making their application for 13 more days afterwards. As per section 90(a) deeming provisions, which are also indicated on the Two Month Notice itself, the Tenant is deemed to have received the Two Month Notice by October 11, 2023, at the latest, the fifth day after mailing. As the Tenant made their application 20 days after they were deemed to have received the Notice, I find that the Tenant has not applied to dispute the Two Month Notice within the time frame allowed by section 49 of the Act.

For the above reasons, the Tenant's application for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act is dismissed, without leave to reapply.

I exercise my authority delegated to me under section 68(2)(a) of the Act and **amend the effective date of the Notice to February 29, 2024, at 1:00 PM, which is when this tenancy will end.** This decision is based on Policy Guideline #54, part B, and I have considered the totality of the circumstances presented by the parties during the hearing, as well as duration of the tenancy, in making this decision.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, the Landlord is entitled to recover the filing fee for this application from the Tenant under section 72 of the Act. The Landlord is authorized to deduct \$100.00 for the filing fee from the security deposit.

Conclusion

The Tenant's application for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on February 29, 2024, after service of this Order on the Tenant.** Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is authorized to deduct the \$100.00 filing fee from the Tenant's security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 10, 2024

Residential Tenancy Branch