



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This decision pertains to the Landlord's application for dispute resolution made on May 30, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks an order of possession of the rental unit and a monetary order for recovery of the filing fee.

The Landlord, her husband, and the Landlord's son (the "Agent") attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Tenants did not attend.

The Agent and Landlord both testified that the Landlord and the Landlord's husband together served the Notice of Dispute Resolution Proceeding package (the "package") on the Tenants, in-person, on June 1, 2018. I find that the Tenants were served the package in accordance with subsections 59(3) and 89(2)(a) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession of the rental unit?
2. Is the Landlord entitled to a monetary order of recovery of the filing fee?

Background and Evidence

The Tenants moved into the rental unit on June 27, 2014. Monthly rent is \$800.00 and there is a security deposit of \$425.00.

On May 8, 2018, the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), with the specific ground that the rental unit will be occupied by the Landlord or the Landlord's close family member with an effective vacancy date of August 7, 2018. The Notice was dated and signed by the Landlord on May 8, 2018, and was served on the Tenants by way of FedEx, on the same date. The Agent submitted into evidence a copy of the Notice, along with a FedEx package tracking document which indicates that the male Tenant signed for and received the Notice on May 11, 2018, at 2:03 p.m.

Analysis

Section 49 of the Act allows a landlord to end tenancy for, among other reasons, the landlord; their spouse; or a close family member intends to occupy the rental unit by issuing a Two Month Notice to End Tenancy for Landlord's Use of Property. Section 49(8) allows the tenant 15 days to file an Application for Dispute Resolution seeking to cancel such a notice. Section 49(9) stipulates that if the tenant does not file an Application to dispute the notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

I find, based on the undisputed testimony and supporting documentary evidence, that the Tenants were served and received the Notice on May 11, 2018. I have no evidence before me to find that the Tenants applied for dispute resolution within 15 days of receiving the Notice, seeking to cancel such a notice. As such, I find that the Tenants have conclusively presumed to have accepted the end of the tenancy.

Section 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The Agent testified that, and provided supporting documentary evidence, that a notice to end the tenancy was given by the Landlord. In addition, there is no evidence before me to find that the Tenants disputed the Notice by making an application for dispute resolution within the 15 days as permitted by section 49(8)(a) of the Act. As per section 49(9), I find the Tenants are conclusively presumed to have accepted the tenancy is ended.

Applying section 55(2) to the undisputed testimony and evidence submitted by the Landlord, I hereby grant an order of possession to the Landlord pursuant to section 55(3) of the Act. This order is effective two days after service upon the Tenants.

As the Landlord was successful in her application I grant her a monetary award of \$100.00 for recovery of the filing fee. I order that the Landlord retain \$100.00 of the Tenants' security deposit in full satisfaction of that award.

Conclusion

The Landlord is granted an order of possession. This order must be served on the Tenants and is effective two (2) days after service on the Tenants. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: July 23, 2018

Residential Tenancy Branch