



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, MNRL-S, FFL

Introduction

This hearing was held based on an Application for Dispute Resolution (“application”) from the landlords seeking remedy under the *Residential Tenancy Act* (“Act”) for an order of possession based on an undisputed 2 Month Notice to End Tenancy for Landlord’s Use of Property dated May 27, 2019, for unpaid rent for July 2019 of \$1,100.00, and to recover the cost of the filing fee.

The tenant, the landlords and an agent for the landlord GF (“agent”) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. Only the evidence relevant to the findings regarding the matter(s) before me are described below.

The tenant confirmed receiving the evidence from the landlords and that they had the opportunity to review that evidence prior to the hearing. The tenant confirmed that they did not submit any documentary evidence in response to the landlords’ application. I find the tenant was sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matter

The parties confirmed their email addresses during the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties. Any applicable orders will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Are the landlords entitled to an order of possession based on an undisputed 2 Month Notice under the *Act*?
- Are the landlords entitled to unpaid rent for July 2019 under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month written tenancy agreement was signed, although a copy of the tenancy agreement was not submitted in evidence by either party. The parties agreed that the tenancy began on March 1, 2019 and that monthly rent is \$1,100.00 per month and is due on the first day of each month. The parties agreed that the tenant paid a security deposit of \$550.00 at the start of the tenancy, which the landlords continue to hold. The tenant continues to occupy the rental unit.

The tenant confirmed that they were served on May 27, 2019, with the 2 Month Notice. The effective vacancy date on the 2 Month Notice is listed as July 31, 2019, which has passed. The tenant did not submit an application to dispute the 2 Month Notice. Page two of the 2 Month Notice indicates the reason as "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The tenant testified that she has not moved out of the rental unit as she has not been able to find a new rental unit. The tenant admitted to not paying July 2019 rent of \$1,100.00. The landlords stated that July 2019 rent was the free month to the tenant as compensation for having issued the 2 Month Notice; however, the landlord is now seeking July 2019 rent as the tenant has failed to vacate the rental unit. The parties confirmed that the tenant has paid money for use and occupancy of the rental unit for the months of August and September 2019. The tenant has not paid any money to the landlords for use and occupancy for the month of October 2019. The hearing was held on October 1, 2019.

The landlords are seeking an order of possession, loss of July 2019 rent of \$1,100.00 and the filing fee.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord's Use of Property – Section 49.1 of the *Act* applies and states:

49.1 (5) A tenant may dispute a notice under this section by making an application for dispute resolution **within 15 days after the date the tenant receives the notice.**

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.

[Emphasis added]

Based on the testimony of the parties, the tenant did not dispute the 2 Month Notice and has failed to vacate the rental unit as of the effective vacancy date, July 31, 2019.

Section 55(2)(b) of the *Act* applies and states:

Order of possession for the landlord

55 (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:

(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;

[Emphasis added]

Based on the above and on the balance of probabilities, I find that the landlords have met the burden of proof and I find the 2 Month Notice was undisputed by the tenant. I have also reviewed the 2 Month Notice and find that it complies with section 52 of the *Act*. Therefore, as no money has been paid for use and occupancy for the month of October 2019, I grant the landlords an order of possession effective two (2) days after service on the tenant.

I find the tenancy ended on July 31, 2019.

Unpaid rent for July 2019 – Section 51(1) of the *Act* applies and states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[Emphasis added]

Given the above, as the 2 Month Notice was not disputed, I find the tenant was entitled to not pay July 2019 rent of \$1,100.00 as compensation for being served with the 2 Month Notice. Therefore, I find the landlords have failed to meet the burden of proof to support that July 2019 rent was owing by the tenant. Accordingly, I dismiss this portion of the landlords' claim due to insufficient evidence, without leave to reapply.

As the landlords' application was partially successful, I grant the landlords the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. As the landlords continue to hold the tenant's security deposit, I authorize the landlords to retain **\$100.00** from the tenant's security deposit of \$550.00, which has accrued no interest, in full satisfaction of the recovery of the cost of the filing fee. I find that the tenant's security deposit balance is now \$450.00, effective immediately pursuant to section 62(3) of the *Act*.

Conclusion

The landlords' claim is partially successful.

The tenancy ended on July 31, 2019. The landlords have been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlords' application for unpaid rent for July 2019 is dismissed without leave to reapply, as indicated above.

The landlords have been authorized to retain \$100.00 from the tenant's security deposit of \$550.00, which has accrued no interest, in full satisfaction of the recovery of the cost of the filing fee. The tenant's security deposit balance is now \$450.00, effective immediately pursuant to section 62(3) of the *Act*.

The parties will be sent the decision by email to the email addresses confirmed for the parties during the hearing. The order of possession will be emailed to the landlords only for service on the tenant.

Should the tenant failed to comply with the order of possession, the landlords are at liberty to apply for compensation under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 1, 2019

Residential Tenancy Branch