



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: O

Introduction

This application was brought by the tenant seeking to have nullified a tenant's notice to end tenancy on the grounds that he signed it prior to the date of August 13, 2008 stated on the document and he was neither given a copy nor the opportunity to read it.

Issue(s) to be Decided

This application requires a decision on whether the tenant's Notice to End is effective and if so, whether to grant the landlord's request for an Order of Possession.

Background and Evidence

This tenancy began March 1, 2008. Rent is \$748 per month of which the tenant pays \$340 and the balance is subsidized.

During the hearing, the landlord's witnesses, in particular the landlord's signatory to the tenant's notice, gave evidence that the tenant signed the document on August 18, 2008 and that it is not the policy of the landlord to have tenants sign undated notices.

The landlord's witnesses gave evidence that the tenant had been given the option to voluntarily give notice after mounting evidence and written and oral complaints from other tenants of drug use and trafficking in the subject rental unit.

Analysis

On examining the evidence, I find the landlord's version of events to be the more credible and that the tenant did sign the tenant's notice to end tenancy on August 18, 2008.

Residential Policy Guideline 11 states, in part, that:

"A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties."

Accordingly, the tenant cannot withdraw the notice without the agreement of the landlord, which agreement is firmly withheld by the landlord in this instance.

As to the landlord's request for an Order of Possession, section 55(2)(a) of the *Act* grants that a landlord may request an Order of Possession on a tenant's notice to end but must do so by making application for it.

In this matter, the application was brought by the tenant, so I do not have authority to grant the order. (This differs from section 55(1)(a) of the *Act* which would permit the landlord to request an order where the tenant had applied to have an order issued by the landlord set aside.)

Conclusion

The tenant's application is dismissed without leave to reapply and the landlord remains at liberty to make application for an Order of Possession.

September 16, 2008
