

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPL, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An order of possession for landlord's use of property, pursuant to section 55;
- A monetary order to recover the cost of filing the Application for Arbitration pursuant to section 72.

The notice of hearing dated March 18, 2009 was served on the tenant on March 20, 2009, by posting it on the front door of the rental unit. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession and to the recovery of the filing fee?

Background and Evidence

On March 02, 2009, the landlord served the tenant with a notice to end tenancy for landlord's use of property (section 49), effective June 01, 2009. The landlord stated that her adult son, who currently lives at home, intends to move into the rental unit.

The landlord stated that she applied for dispute resolution prior to the effective date of the notice to end tenancy, to obtain an order of possession, for use in the event that the tenant did not move out on June 01, 2009. The landlord also applied for a monetary order for the recovery of the filing fee.

Analysis

Section 49 of the *Residential Tenancy Act*, states that a tenant may dispute a notice to end tenancy for landlord's use of property by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

If a tenant who has received a notice under this section does not make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

In this case the effective date of the notice is June 01, 2009 and the tenant has not applied to dispute the notice within 15 days of receiving the notice. Therefore, the tenant must vacate the rental unit on or before June 01, 2009 and pursuant to section 55, I am issuing a formal order of possession effective June 01, 2009. This Order may be filed in the Supreme Court for enforcement.

I find that the landlord's application for an order of possession was premature and possibly unnecessary if the tenant moves out by June 01, 2009. Therefore, the landlord is not entitled to the recovery of the filing fee.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 p.m. on June 01, 2009.

Dated May 11, 2009.

Dispute Resolution Officer