

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

OPC, CNC, FF

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to Section 55 and for the recovery of the filing fee. The tenant applied to cancel the notice to end tenancy, pursuant to Section 49.

The notice of hearing dated July 30, 2009 was served on the tenant on July 30, 2009, by registered mail. The landlord provided a tracking number. Despite having been served the notice of hearing and having made application for a dispute resolution hearing scheduled for this date, 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

Does the landlord or a close family member of the landlord intend in good faith to occupy the rental unit? Is the landlord entitled to the recovery of the security deposit?

Background and Evidence

The tenancy started on January 01, 2003 on a month to month basis. Rent is currently \$500.00 due on the first day of each month.

On July 06, 2009, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The notice was served in person on the tenant on that same date. A copy of the notice was submitted into evidence. The date shown on the notice by when the tenants must vacate the unit is September 30, 2009.

The landlord stated that her 27 year old son who is currently living at home intends to move into the rental unit. The landlord is applying for an order of possession effective

on or before September 30, 2009 which is the effective date of the notice to end tenancy.

Analysis

Pursuant to section 49(3) of the *Residential Tenancy Act*, a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord, intends in good faith to occupy the rental unit. A tenant may dispute a notice under this section by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant disputed the notice by making application for dispute resolution within the fifteen day time frame; however the tenant did not attend the hearing. Therefore, 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 September 30, 2009. Based on the undisputed testimony of the landlord, I find that the landlord is entitled to an order of possession effective September 30, 2009. Accordingly, the notice to end tenancy is upheld and pursuant to section 55(2) I am issuing a formal order of possession. This order may be filed in the Supreme Court for enforcement.

The landlord applied for an order of possession well in advance of the effective date of the notice. Therefore, I find that the landlord is not entitled to the filing fee.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 p.m. on September 30, 2009. The tenant's application is dismissed.

Dated August 19, 2009.

Dispute Resolution Officer