



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPC, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated September 11, 2010, and purporting to be effective October 11, 2010.

Despite being served by registered mail sent on November 17, 2010, the tenant did not appear.

Issue(s) to be Decided

The issue to be determined on the landlord's application, based on the testimony and the evidence was whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause. This required a determination of whether or not the landlord succeeded in proving that the tenant or a person permitted on the residential property by the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The burden of proof is on the landlord to justify that the Notice to End Tenancy should be enforced and an Order of Possession issued.

Background and Evidence Notice to End Tenancy

The landlord testified that the tenancy had originally started in August 2010 at which time the tenant paid a security deposit of \$375.00. The landlord testified that the tenant was issued with a One-Month Notice to End Tenancy for cause because the tenant has significantly interfered with or unreasonably disturbed the landlord and another resident and engaged in illegal activity that had or is likely to adversely affect the quiet enjoyment, security, safety of physical well-being of another occupant or the landlord. The landlord testified that the Notice was served on the tenant in person on September 11, 2010. The landlord testified that the tenant had not filed an application to dispute the Notice.

Analysis of Issue - Notice to End Tenancy

Under section 47 (1) (d) (ii) of the Act, a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this instance, the effective date was stated as October 11, 2010. However, under section 47(2), I find that the effective date for the notice must be amended to comply with the Act and will be changed to October 31, 2010.

The Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with subsection (4), 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.

In this instance, the tenant would have to file an application to dispute the Notice by September 21, 2010. I find that the tenant did not ever make any application to dispute the One-Month Notice. Therefore I find that under the Act an Order of Possession must be issued in favour of the landlord based on the One-Month Notice.

In regards to the landlord's claim for damages, I find that this portion of the application must be dismissed with leave to reapply as the tenancy had not yet ended and the claim was therefore premature.

Conclusion

I hereby grant the landlord an Order of Possession effective 2 days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that the landlord is entitled to retain the \$50.00 from the tenant's security deposit of \$375.00, leaving a balance of \$325.00 still held on behalf of the tenant. The remaining deposit must be administered in compliance with section 38 of the Act.

This decision 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: December 2010.

Dispute Resolution Officer