



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This matter dealt with an application by the landlord to obtain an Order of Possession and recover the filing fee for this application. The landlord stated at the start of the hearing that she had inadvertently checked the wrong box on the application. She had checked the box for an Order of Possession for cause when it should have been for landlords' use of the property. As it was a Two Month Notice that was issued I have allowed the landlord to amend her application to show the correct section she has applied for. The tenant would be fully aware on what grounds the landlord seeks an Order of Possession as she was in receipt of the Notice.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on May 31, 2011. The tenant confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for landlords' use of the property?

Background and Evidence

Both parties agree that this tenancy started on March 15, 2009. Rent for this unit is \$600.00 per month and is due on the first of the month in advance. The tenant paid a security deposit on March 15, 2009 of \$300.00.

The landlord testifies that the tenant was served with a Two Month Notice to End Tenancy on March 03, 2011 in person. The landlord later agreed this notice was served by posting it to the tenants' door as she would not open her door. The Notice is therefore deemed served on March 06, 2011. The reason given on this notice to end the tenancy is that the rental unit will be occupied by the landlord, the landlords spouse or a close family member of the landlord or her spouse. A previous hearing was held on April 20, 2011 where the tenant applied to cancel this Notice. At that hearing the Dispute Resolution Officer ruled that the tenant had filed her application outside the 15 day time frame and her application to cancel the Notice was dismissed. It was also determined at that hearing that the Notice remained in force. The tenant applied for a review of that decision on the basis that she did not receive a fair hearing and her review application was also dismissed as the tenant had applied outside the allowable time frame.

The landlord testifies that her son and his girlfriend wish to move into the rental unit which is in the basement of her home. She states she is now on a pension and has not been well so wants her son to remain living close to her. She also states her son will be able to help her with the mortgage for the house. She states at present her son lives with her in her upper unit but wants to have his own unit to share with his girlfriend.

The tenant testifies that this all started when she asked the landlord to make repairs and because she did not want to be a home stay. She states she filled out a medical disability form and shared information from this with the landlord. She states since that time the landlord wants people to think she is crazy and the landlords attitude towards her changed. The tenant also states the landlords' son became disrespectful towards her. The tenant states the landlords' son told her they want to get her out of the unit and would rather find

another tenant who will put up with the bad laundry facilities and the fact that dirty laundry water comes up into her bathtub.

The tenant presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I confirmed with both parties that they are bound by the decisions made by the previous dispute resolution officers and I would not consider the issues that the tenant attempted to raise again at this hearing.

It is my decision that a landlord is entitled to serve the tenant with a Two Month Notice to End Tenancy for the reason given on the Notice. The tenant suggests that the landlord did not issue this Notice in good faith but rather wants to end her tenancy because she complains about repairs required in her unit.

The tenant has provided no evidence to support her claim that the landlord has not acted in good faith. A tenant has the right to dispute this Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch and the tenant failed to file her application on time to do so and her application to cancel the Notice was dismissed.

Consequently it is my decision that the landlord has established her claim for an Order of Possession based on the reason given in the Two Month Notice pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the Respondent 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 retain this amount from the security deposit of \$300.00 leaving a balance \$250.00 which must be returned to the tenant or otherwise dealt with 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: June 21, 2011.

Residential Tenancy Branch