



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and two witnesses for the tenant.

This hearing was convened as the result of the April 2, 2012 decision on the tenant's Application for Review Consideration that granted a new hearing as the tenant was unexpectedly unable to attend the original hearing for reasons beyond his control for a decision granted from a hearing that was held on March 16, 2012.

I advised the parties at the outset of the hearing that I would hear testimony and consider the evidence of both parties and that the possible outcomes would be that I would confirm; vary or set aside the original decision in accordance with Section 82 of the *Residential Tenancy Act (Act)*.

I offered the parties an opportunity to enter into discussions to a mutual agreement to end the tenancy at the tenant's suggestion however the tenant did not want to enter into any discussions during the hearing and no discussions were entertained.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on February 1, 2011 as a month to month tenancy for the monthly rent of \$795.00 due on the 1st of each month with a security deposit of \$397.50 paid.

The landlord testified on January 27, 2012 he received a January 24, 2012 dispute resolution decision that noted the tenant had testified the landlord had issued a 1 Month Notice to End Tenancy for Cause because he did not want to provide the tenant with compensation as is required if the landlord seeks to end the tenancy for his own use.

Immediately after receiving this decision the landlord and his son attended the rental unit; knocked on the door and spoke to the tenant through the door. When the tenant refused to open the door the landlord testified he served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property by posting it on the door of the rental unit.

The landlord testified a picture was taken of the notice on the tenant's door, the tenant testified the photograph is not of his door. The only photograph submitted was of the order of possession granted in the March 16, 2012 hearing posted to a door.

The tenant and his two witnesses testified that the tenant was not at home on the date the landlord states he served the notice. One of the tenant's witnesses stated he met the tenant at another property at approximately 10 a.m. and that he was with the tenant throughout the entire weekend.

The tenant testified that he has not yet received a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord testified that he attempted to serve the tenant with his notice of hearing package on March 1, 2012 but the tenant refused to accept the package so the landlord called police to escort him to serve documents.

The landlord testified as to the contents of the package that he served on the tenant and the documents included a copy of his Application for Dispute Resolution; the Notice of Hearing Documents; and his evidence including a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant testified that he received everything described by the landlord except a copy of the 2 Month Notice.

Both parties provided written submissions and testimony questioning the credibility of each other including in dealings with each other, the police, and dispute resolution proceedings during the tenancy. The parties have had two previous hearings during the

tenancy, from the decisions on both of those occasions the service of any documents, including a 1 Month Notice to End Tenancy was not at issue.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for personal use of the property by giving the tenant a notice effective on a date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement.

Section 88 allows the landlord to serve such a notice by posting it to the door of the rental unit. In the case of verbal testimony, I find that where statements are clear and both the landlord and tenant agree, there is no reason why such testimony cannot be relied upon. However when the parties disagree, the verbal testimony, by its nature, is virtually impossible for a third party to interpret when trying to resolve disputes. As such, the burden of proof is on the party making the claim.

While I accept the tenant was at a location approximately 1 hour away by 10:00 a.m. on the morning of January 27, 2012 and returned to the unit later that weekend, the tenant has provided no evidence or testimony to refute the landlord had posted the notice on the door or that he received the notice.

In regard to the tenant's testimony that the photograph shows the landlord's door not his and since the photograph submitted is that of the order of possession granted on March 16, 2012 and not of a 2 Month Notice to End Tenancy, I find this testimony is not relevant to the matters before me.

Further, as the parties have a very recent history in accessing the dispute resolution process including the proper service of documents and in light of the tenant's assertion that he had not received the 2 Month Notice either on the date the landlord served it or in the landlord's subsequent evidence, I find, based on the balance of probability, the tenant to be less credible in these matters.

In particular, I find it unlikely that the landlord would have specifically withdrawn a copy of the 2 Month Notice from his evidence package that he had provided to the Residential Tenancy Branch and at the very latest the tenant would have received a copy of the 2 Month Notice on March 1, 2012.

For these reasons I find the landlord did serve the 2 Month Notice to End Tenancy for Landlord Use on January 27, 2012, in accordance with Section 88 of the *Act*.

I note the tenant did not file an Application for Dispute Resolution to dispute the 2 Month Notice as found in the decision of March 16, 2012 either upon receipt of the Notice after it was posted on January 27, 2012 or after the tenant received a copy of the Notice with the landlord's hearing package.

Conclusion

For the reasons noted above, I find no cause to alter the decision and I therefore confirm the decision dated March 16, 2012 issued by Dispute Resolution Officer XXXXXX.

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: April 23, 2012.

Residential Tenancy Branch