



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for breach of an agreement and for cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, a role call was performed at the beginning of the teleconference call and the tenant was not heard. Nor did the teleconference system indicate the tenant had dialled in. The landlord testified that he served the tenant with notice of this hearing via registered mail sent June 28, 2012. I proceeded to hear from the landlord assuming the tenant was not present. After the landlord finished testifying the tenant announced that she was present at the hearing and had been present since the beginning of the hearing. I proceeded to hear from the tenant with respect to receipt of a 1 Month Notice to End Tenancy for Cause.

The tenant stated that she had brought documentary evidence to the Residential Tenancy Branch and was physically present at the Residential Tenancy Office at the time the hearing commenced. The Rules of Procedure require evidence to be served upon the other party and the Residential Tenancy Branch at least five days before a scheduled hearing. I informed the tenant I would not accept such late evidence or evidence that was not served upon the other party. Rather, I informed the parties that I would hear verbal testimony from the tenant with respect to receipt of a 1 Month Notice to End Tenancy.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The applicant is a tenant of the property and has the permission of the owner to sublet the rental unit. The applicant does not currently reside in the rental unit. Rather, the

tenant resides in the rental unit and pays rent to the applicant. The applicant in turn pays rent to his landlord. The applicant is herein referred to the landlord in this tenancy relationship.

The four month fixed term tenancy commenced April 26, 2012 and the tenant is required to pay rent of \$850.00 on the 1st day of every month. The fixed term is set to expire August 26, 2012 and the tenant is required to vacate the rental unit on that date pursuant to the sub-tenancy agreement.

It was undisputed that on June 2, 2012 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause. The Notice indicates several reasons for ending the tenancy and has a stated effective date of July 2, 2012. The tenant did not file to dispute the Notice with 10 days of receiving the Notice. Rather, the tenant explained she thought this hearing was an opportunity to dispute the reasons indicated on the Notice.

On June 25, 2012 the landlord filed this application. The landlord explained that he had reason to believe the tenant would not vacate the rental unit on the effective date since she did not adhere to requests for her to remove a cat from the property and she declined the landlord's offer to help her with moving. The tenant was given an opportunity to respond to these statements to which she declined to do.

Evidence provided for this proceeding by the landlord included a copy of the tenancy agreement, the 1 Month Notice to End Tenancy; and photographs of the registered mail receipt for service of the hearing package.

Analysis

Considering the undisputed submissions and the tenancy agreement provided to me, and as provided under Residential Tenancy Policy Guideline 19: *Assignment and Sublet*, I accept that the applicant landlord is a landlord to the tenant under a sub-tenancy agreement. Accordingly, I find the applicant has the rights and obligations of a landlord under the Act.

Section 47 of the Act provides that a landlord may end a tenancy for cause by issuing a 1 Month Notice to End Tenancy for Cause. Upon receipt of such a Notice a tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice. Subsections 47(4) and (5) provide:

(4) 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.

(5) If a tenant who has received a notice under this section 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.

Since the tenant had not disputed the Notice by filing an Application for Dispute Resolution within 10 days of receiving the Notice, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice. I find no basis under the Act to deny the landlord an Order of Possession as requested.

As the parties were informed, since the tenant pays rent on the 1st day of the month the effective date of the Notice is automatically changed to read July 31, 2012 pursuant to section 53 of the Act. I provide an Order of Possession to the landlord to be effective at 1:00 p.m. on July 31, 2012.

With respect to recovery of the filing fee, I award the landlord recovery of the \$50.00 he paid for this application since the tenant did not provide a response or refute the landlord's statements during the hearing. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in order to recover this award.

Conclusion

The tenancy shall end July 31, 2012 at 1:00 p.m. The landlord has been provided an Order of Possession to serve upon the tenant and enforce as necessary.

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: July 17, 2012.

Residential Tenancy Branch