



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution. On July 24, 2012 the Residential Tenancy Branch received an Application for Dispute Resolution in the mail from the Landlord, in which the Landlord applied for an Order of Possession for Cause, to end the tenancy early and for an Order of Possession on the basis of that early end to the tenancy; and for a monetary Order for damage to the rental unit.

The Agent for the Landlord stated that he subsequently amended the Application for Dispute Resolution by removing the application for a monetary Order for damage to the rental unit and to end the tenancy early and for an Order of Possession on the basis of that early end to the tenancy; and by adding an application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that on July 29, 2012 he personally served the amended Application for Dispute Resolution and Notice of Hearing to an adult at the rental unit, although he does not know whether the adult was a guest or occupant of the rental unit.

The Tenant stated that she received the Application for Dispute Resolution and Notice of Hearing from a friend on July 29, 2012 or July 30, 2012. Based on her description of the Application for Dispute Resolution, I find that she was served with the original Application for Dispute Resolution rather than the amended Application for Dispute Resolution.

Although the Agent for the Landlord is certain that he served the amended copy of the Application for Dispute Resolution, I find it entirely possible that he accidentally served the amended copy. In determining this matter I was heavily influenced by the fact that it is not in the Tenant's best interests to be dishonest about this issue, as the Landlord is seeking less in the amended Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted a copy of a Notice to End Tenancy, dated April 01, 2012, to the Residential Tenancy Branch. The Agent for the Landlord stated that although he had

previously served the Tenant with a One Month Notice to End Tenancy, he did not serve a copy of any Notices to End Tenancy as evidence for these proceedings. As the Notice to End Tenancy submitted to the Residential Tenancy Branch was not served to the Tenant as evidence for these proceedings, it was not accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2011.

The Agent for the Landlord stated that he personally served the Tenant with a One Month Notice to End tenancy for Cause. He stated that he is not certain of the date he served the document, but he believes it was served on June 20, 2012.

The Agent for the Landlord stated that he is not currently in possession of this Notice to End Tenancy but he recalled that it was dated June 22, 2012 and he “thinks” the Notice declared that the Tenant must vacate the rental unit by July 22, 2012. Using a blank Notice to End Tenancy for Cause to refresh his memory, the Agent for the Landlord stated that the reasons for ending the tenancy listed on the Notice to End Tenancy he served were that the Tenant has allowed an unreasonable number of occupants in the unit; that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord’s property at significant risk; that the Tenant has engaged in illegal activity that has, or is likely to, damage the landlord’s property; that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord; and that the Tenant has caused extraordinary damage to the unit or property.

The Tenant stated that she received a Notice to End Tenancy in April of 2012, that that Notice to End Tenancy was the subject of a previous dispute resolution hearing; and that she did not receive a Notice to End Tenancy in June of 2012.

Analysis

Section 47 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy for a variety of reasons by giving notice to end the tenancy. The onus is on the landlord to prove that there are grounds to end the tenancy and that the tenant has been served with proper notice to end the tenancy.

I find that the Landlord submitted insufficient evidence to establish that the Tenant has been served with a One Month Notice to End Tenancy at any time in June of 2012. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that he served the Notice to End Tenancy on June 20, 2012 or to refute the Tenant's testimony that she was not served with a Notice to End Tenancy in June of 2012.

I specifically note that the Landlord did not submit a copy of the Notice to End Tenancy that was allegedly served in June of 2012 as evidence. I further note that the Agent for the Landlord is not certain of the date he served the Notice to End Tenancy in June of 2012 and that he is relying entirely on his memory when he declared that he served the Notice to End Tenancy on June 20, 2012. Finally, I note that the Agent for the Landlord believes the Notice to End Tenancy that he served was dated June 22, 2012, which is two days after he allegedly served the Notice, which causes me to question the reliability of his memory.

Conclusion

As the Landlord has failed to establish that a Notice to End Tenancy was served to the Tenant in June of 2012, I dismiss the Landlord's application for an Order of Possession.

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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: August 22, 2012.

Residential Tenancy Branch