



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, OPC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession 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.

I informed the parties of the dispute resolution process including instructions to not interrupt or speak out of turn.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

Pursuant to the written tenancy agreement, the tenancy commenced September 1, 2003 and the tenants are required to pay rent on the 1st day of every month.

On February 12, 2013 the landlord sent a 1 Month Notice to End Tenancy for Cause (the Notice) and a covering letter to the tenants via registered mail. The Notice has a stated effective date of March 31, 2013.

The tenants confirmed receiving both pages of the Notice within a few days of mailing and responding to the Notice and the covering letter by writing to the landlord on February 19, 2013. The tenants did not file an Application for Dispute Resolution to dispute the Notice.

During the hearing the tenants indicated that did not intend to vacate the rental unit and wished to dispute the reasons indicated on the Notice. I informed the parties that since the tenants had not filed to dispute the Notice and this was an Application by the

landlord to enforce the Notice the reasons for issuance of the Notice were not relevant. Rather, the issue for me to determine was whether the tenants received a 1 Month Notice to End Tenancy in the approved form and confirm that they did not file an Application for Dispute Resolution to dispute it within 10 days of receiving it.

As I was satisfied the tenants received a 1 Month Notice to End Tenancy in the approved form and the tenants did not file an Application for Dispute Resolution to dispute it within 10 days of receiving it, as required by section 47 of the Act, I orally provided my decision that the tenancy would end pursuant to the Notice.

The tenants' Advocate requested the tenants be provided more time to vacate the rental unit on humanitarian grounds. The landlord was not agreeable to extending the effective vacancy date, citing concerns about the health and safety of the landlord's managers.

Given the opportunity to be heard the female tenant spoke about old and mouldy carpets in the rental unit and quickly became irrational. Whereas, the male tenant began to make made irrelevant and negative statements pertaining to the manager's personal life. The tenants presented themselves as aggressive and antagonistic. I interrupted their oral submissions pursuant to the Rules of Procedure that prohibits parties from conducting themselves in a manner that is rude, antagonistic, or otherwise inappropriate.

Analysis

Where a tenant receives a 1 Month Notice to End Tenancy under section 47 of the Act, the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice. This information is also contained on the second page of the Notice.

Where a tenant receives a 1 Month Notice and does not file an Application for Dispute Resolution to dispute it, section 47(5) provides that 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.

As it was undisputed that the tenants received 1 Month Notice in the approved form in February 2013 and I confirmed that they did not file to dispute the Notice by making an Application for Dispute Resolution I have found that the tenants are conclusively

presumed to have accepted that the tenancy would end on March 31, 2013 pursuant to section 47(5) of the Act.

Section 55 of the Act provides for circumstances where a landlord may request an Order of Possession, including:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Pursuant to section 55(2) of the Act, I find the landlord entitled to receive an Order of Possession.

Section 55(3) of the Act provides that I may specify an effective date on the Order of Possession that is different than the effective date on the Notice; however, in this case I have decided to deny that request by the tenant's Advocate as I found the tenants' conduct during the hearing to be aggressive and irrational and that to extend the effective date reasonably likely to jeopardize the landlord's lawful rights.

In light of the above, I provide the landlord with an Order of Possession to serve upon the tenants that shall be effective at 1:00 p.m. on March 31, 2013.

The landlord is awarded the filing fee paid for this application. In satisfaction of this award the landlord is authorized to deduct \$50.00 from the tenants' security deposit.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on March 31, 2013 to serve 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: March 27, 2013

Residential Tenancy Branch

