



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession based on a notice to end tenancy for cause and to recover the filing fee from the Tenants.

The Landlord and the owner of the property containing the rental suite appeared for the hearing along with both Tenants. The Tenants confirmed receipt of the Landlord’s Notice of hearing documents and the Landlord’s evidence submitted prior to the hearing and as a result, I find that the Landlord served the Tenants in accordance with the *Residential Tenancy Act* (the “Act”). One of the Tenants (“SL”) provided affirmed testimony on behalf of the Tenants and testified that they had submitted written evidence two days prior to the hearing. As this evidence was not received by the Residential Tenancy Branch in accordance with the Rules of Procedure, which are also outlined in the fact sheet provided to the Tenants, I did not consider this evidence.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence and to cross-examine the other party, and make submissions to me. I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure. However, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy started on April 1, 2014 on a month-to-month basis. No written tenancy agreement was signed but the Tenants paid the Landlord \$350.00 as a security deposit and \$350.00 as a pet damage deposit on April 1, 2014.

Rent was established between the parties at \$700.00 per month payable by the Tenants on the first day of each month.

The Landlord testified that the Tenants were served with a 1 Month Notice to End Tenancy for Cause (the "Notice") on April 9, 2014 by attaching it to the Tenants' door. The Landlord provided a copy of the Notice which shows an expected move out date of May 9, 2014 and states the reason for ending the tenancy is because the "Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord". The Landlord provided some written evidence in relation to the reasons for ending the tenancy and submitted that he wanted to the tenancy to end on May 9, 2014 and required an Order of Possession.

The Tenants confirmed that they had received the Notice on April 9, 2014 but did not make an Application to dispute the Notice. SL submitted that they did not agree with the reasons provided to them on the Notice and requested that the matter be resolved mutually during the hearing so that the tenancy can continue. When the provisions of the Act were explained in relation to the option and time limits the Tenants had to dispute the Notice, which were also explained on page two of the Notice, the Tenants understood this provision but still sought to continue the tenancy. SL also submitted that a tenancy had not been established with the Landlord, but rather with the owner of the property who is the Landlord for the Landlord named in this Application; therefore, the Landlord had no authority to issue them with the Notice.

The Landlord submitted that he was the Tenants' Landlord and he was subletting the basement suite of the property with the consent of the owner. The owner confirmed the Landlord's testimony and submitted that he had nothing to do with the Tenants in this Application and he himself had no intentions to engage in a tenancy with the Tenants.

Analysis

The definitions of the Act allows for a tenancy agreement to be established through an oral agreement for the possession of a rental unit. In addition, Section 17 of the Act states that a Landlord may require a Tenant to pay a security deposit as a condition of entering into a tenancy agreement. Based on the evidence provided during the hearing, I find that the Landlord and Tenants established a tenancy for the basement suite and this was further re-enforced through the exchange of the security and pet damage deposits which were given to the Landlord by the Tenants.

I have examined the Notice and I find that it was completed with the correct information on the approved form as required by Section 52 of the Act. Section 47(2) of the Act

requires that a Notice for cause must end the tenancy effective on a day that gives the Tenant a period of time that incorporates one full **rental** month for the Notice to be effective. As the Notice was served to the Tenants in the month of April, 2014, the effective date of the Notice is automatically changed to May 31, 2014 pursuant to Section 53 of the Act.

Section 48(5) of the Act allows a Tenant to dispute a Notice by making an Application within ten days of receiving the Notice. Therefore, the Tenants had until April 19, 2014 to make the Application to dispute the Notice, which they did not. Section 48(6) of the Act states that if a Tenant fails to make an Application within ten days, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date.

Therefore, as the Tenants failed to make an Application under the time limits stipulated by the Act, the tenancy will end on the effective corrected date of the Notice, being May 31, 2014. As a result, the Landlord's request for an Order of Possession is granted.

Since the Landlord has been successful in this Application, I also grant the \$50.00 filing fee to the Landlord.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession which is effective at **1:00 p.m. on May 31, 2014**. This order must be served onto the Tenants and may then be filed and enforced in the Supreme Court as an order of that court.

I also allow the Landlord to deduct \$50.00 from the Tenants' deposits for the filing fee, pursuant to Section 72(2) (b) of the Act. The rights and obligations of the parties in relation to the return of the security deposit at the end of the tenancy still apply.

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: May 01, 2014

Residential Tenancy Branch

