



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

The tenant gave evidence that the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution were served late, and requested that the matter not be heard.

Issue(s) to be Decided

What is the consequence of the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution being served late?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy agreement that was signed by the parties on April 29, 2013 indicates the tenancy started May 1, 2013 and is a month-to-month tenancy. The tenant is obligated to pay \$1,600.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$800.00 and a pet deposit of \$500.00.

The addendum to the tenancy agreement, which was also signed by the parties on April 29, 2013, states the tenant is renting the upper portion of the house for \$1,600.00. The addendum gives the tenant 30 days to find a tenant for the downstairs suite. If the tenant does so, then the tenancy agreement will be for the whole house at a rent of

\$2,200.00 monthly. If the tenant does not, the tenant will continue to rent only the upper portion of the house for \$1,600.00 and the landlord will rent the downstairs suite out separately.

The parties agree that the tenant did find a tenant for the downstairs suite, and therefore paid the landlord \$2,200.00 monthly for the whole house until November 1, 2013. Since November 1, 2013, the tenant has been renting only the upper portion of the house and is therefore obligated to pay \$1,600.00 rent monthly.

The landlord gave evidence that she served the tenant with a notice to end tenancy for landlord's use (the "Notice") in person on February 28, 2014. The tenant disputes this version of events, and says the landlord served the Notice by posting it on the door and she received it on March 1, 2014.

The Notice specifies an effective date, or move-out date, of April 30, 2014. The Notice states the following reason for the Notice: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The landlord gave evidence that she intends to move into the rental unit herself. As evidence, she provided a copy of a tenancy agreement with a third party for another dwelling. The landlord's evidence is that the other dwelling is her former home which she has rented out so that she can move into the rental unit.

The landlord gave evidence that she agreed the tenant would not pay rent for April 2014, in compliance with Section 51 which provides tenants with one month's rent as compensation when a rental unit is converted to landlord's use. However, the landlord says the tenant refused to move out at the end of April. The parties agree the tenant continues to occupy the rental unit and has not paid rent for May and June 2014.

The Landlord's Application for Dispute Resolution and Notice of a Dispute Resolution Hearing for this hearing are dated May 8, 2014. The tenant gave evidence that she did not receive these documents until June 13, 2014 and the package containing them is postmarked June 10, 2014. The landlord agrees she mailed the documents on June 10, 2014.

The tenant says she did not have enough time to prepare for the hearing in the 11 days between June 13th and the hearing date of June 25th. She states she would have submitted evidence that the Notice was served late, that the landlord's evidence for this hearing was served late, that the landlord previously served her with another notice to

end tenancy for landlord's use which was cancelled in an RTB hearing earlier this year, and that the landlord has a history of ill intent and lying. The tenant says she does not believe the landlord intends to move into the rental unit, and she states a city bylaw officer would give evidence in support of this belief.

Analysis

Section 59 of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. In addition, Rule 3.1 of the Residential Tenancy Rules of Procedure provides that the notice of a dispute resolution hearing must be served on the respondent together with the application for dispute resolution.

In this case, the landlord filed her Application for Dispute Resolution on May 8, 2014 and the RTB provided her with the Notice of a Dispute Resolution Hearing the same day. I accept the evidence of the parties that the landlord did not serve these documents on the tenant for over a month. I find that these documents were served after the statutory time limit for doing so. However, the Act does not specify any particular consequence or penalty for failing to serve such documents within the time limit.

Although the late service of the Application for Dispute Resolution does not automatically mean that a hearing will not proceed, there may be some circumstances where administrative fairness requires that a respondent be granted more time to prepare for a hearing. In this case, I find that administrative fairness does not require that the tenant be granted more time to prepare for the hearing. This is because the evidence the tenant wishes to provide would not make a difference to the outcome of this hearing.

According to Section 49(8), a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within 15 days after the date the tenant receives the notice. Section 49(9) then states:

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

In this case, the parties disagree about what date the tenant received the Notice. The landlord states the Notice was served personally on February 28, 2014 and the tenant states it was put on her door on March 1, 2014. In either case, the tenant agrees that she received the Notice and did not make an application for dispute resolution.

Since the tenant did not dispute the Notice, she is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. The tenant says that she received the Notice on March 1, 2014 and the effective date specified on the Notice is April 30, 2014. If that is the case, then Section 53 of the Act deems that the effective date is changed to the next date that complies with the Act. If the tenant received the Notice on March 1, 2014, then the effective date of the Notice is deemed to be May 31, 2014.

Having chosen to not dispute the Notice, the tenant may not use the hearing of the landlord's application for an order of possession to argue that the Notice should not be upheld. For that reason, I did not find it appropriate to adjourn the hearing so that the tenant could provide evidence regarding the landlord's intent for the rental unit.

Since the tenant received the Notice by March 1, 2014 at the latest and did not apply to dispute the Notice, and since the effective date of the Notice is now past, I find the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the evidence of the parties that the tenant did not pay rent for April, May, or June 2014. The tenant was entitled to one month's free rent pursuant to Section 51. Accordingly, the landlord is entitled to a monetary order for two months' rent which is \$3,200.00. The landlord is also entitled to recover her RTB filing fee of \$50.00.

The total amount due the landlord is \$3,250.00. I order that the landlord retain the security deposit of \$800.00 and pet deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,950.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order for \$1,950.00. The landlord is also entitled to retain the security deposit and the pet deposit.

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: June 27, 2014

Residential Tenancy Branch

