



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, FF, ET, O

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 for an early end of tenancy; for a Monetary Order for unpaid rent or utilities and for damage to the unit, site or property; for “Other” issues of which none were identified during the hearing; and to recover the filing fee.

The Landlord and an agent for the Tenants appeared for the hearing and provided affirmed testimony during the hearing. The Landlord also provided written evidence prior to the hearing.

Preliminary Issues and Findings

Pursuant to Section 56 of the Act, when a Landlord makes an Application to end the tenancy early, they are only able to apply for this reason alone and to recover the filing fee. The Landlord had made this Application for all of the above reasons on June 23, 2014. The Residential Tenancy Branch explained to the Landlord that if he wanted to make an Application for an early end of the tenancy, then the Landlord would be required to amend his Application to delete the above codes (MND, MNR, OPC and O) and only include the ET and FF codes in order to put the Tenants on notice for the Landlord’s claim to end the tenancy early and recover the filing fee.

The electronic file generated as a result of the Landlord’s Application shows that the Landlord was requested to make the amendments before serving the Tenants with the a copy of the Application and the Notice of Hearing documents.

At the start of the hearing, I asked the Tenants’ agent to confirm receipt of the Landlord’s Application, which he did, and confirm the codes that had been selected by the Landlord on the second page. The Tenant confirmed the codes, and as per my copy

of the Landlord's Application, the Landlord had failed to make the amendments requested.

As a result, I was unable to consider the Landlord's Application for an early end of tenancy and decided to proceed with the hearing based on the Landlord's Application for an Order of Possession for cause.

The Tenants' agent confirmed that the Tenants had accepted the 1 Month Notice to End Tenancy for Cause (the "Notice") which had been served to them by the Landlord on June 10, 2014. The Notice was provided as evidence and shows an expected move out date of July 31, 2014 and states the reasons for ending the tenancy is because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Tenants' agent confirmed that the Tenants were in the process of making preparations to move out of the rental suite by the end of the month, possibly even sooner, and that they were not disputing the Notice and were agreeable to the Landlord being issued with an Order of Possession for the end of July, 2014 as per the Notice.

The Landlord indicated that he required an immediate Order of Possession and I explained that I was unable to issue an immediate Order of Possession because an Application for this has not been satisfactorily made and the Tenants had not been put on proper notice for this claim. However, based on the Tenants' agent's submissions I was able to issue the Landlord with an Order of Possession for the end of July, 2014.

Section 48(5) of the Act allows a Tenant to dispute a Notice by making an Application within ten days of receiving the Notice. As the Tenants failed to dispute the Notice, 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. As a result, the Landlord's Application requesting for an Order of Possession for cause is granted.

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

The Landlord explained that his claim at the time of making the Application for unpaid rent or utilities was in relation to the fact that the Tenants had not paid utilities by not putting them into their names which they were required to do. However, the Landlord was not aware of the exact amount outstanding and no monetary amount was stipulated on the Application for this amount.

The Landlord also claimed that the Tenants had been served with a notice to end tenancy for unpaid rent or utilities for July, 2014 rent. The Tenant's agent explained that the Tenants had disputed the Notice after consulting with their legal counsel and a hearing for this had been scheduled for another date and time, the file number for which was provided by the Tenant's agent during the hearing for verification.

Based on the fact that the Landlord was unable to determine and provide evidence of the amount of utilities outstanding and the fact that the notice to end tenancy for July, 2014 unpaid rent had been disputed, I find that it is not appropriate for me to deal with the Landlord's monetary claim in this hearing. As a result, I give the Landlord leave to re-apply for the monetary claim.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession which is effective at 1:00 p.m. on July 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 if the Tenants fail to vacate on this date and time.

I also allow the Landlord to deduct \$50.00 from the Tenants' security deposit for the filing fee, pursuant to Section 72(2) (b) of the Act.

The Landlord's monetary claim is dismissed **with** leave to re-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: July 11, 2014

Residential Tenancy Branch

