



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, to retain the Tenant's security deposit and to recover the filing fee.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 1, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing was conducted in the Tenant's absences.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

The Landlord said he purchased the property on May 13, 2014 and the previous owner did not provide him with any tenancy information and the previous owner did not give him the Tenant's security deposit.

The Landlord said he issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property on May 15, 2014 by personal delivery. The Effective Vacancy Date on the Notice is July 15, 2014. The Landlord was informed the Effective Vacancy Date should be July 31, 2014. Section 53 of the Act automatically changes incorrect effective vacancy dates to the correct date. In this situation the effective vacancy date is changed to July 31, 2014.

The Landlord continued to say that the Tenant said she would move out if given proper notice and so the Landlord served the Tenant a 2 Month Notice to End Tenancy. The Landlord said the Tenant has not moved out and has not paid rent for July, August and September, 2014.

The Landlord said he is renovating the house and that is the reason he is ending the tenancy.

The Landlord requested an Order of Possession as for as soon as possible, to have the security deposit paid and a monetary order for unpaid rent.

Analysis

Section 49(6)(b) of the Act states that **within 15 days of receiving** a Notice to End Tenancy for Landlord's Use of the Property Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 49(9) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was served, or on May 15, 2014. Consequently, the Tenant would have had to apply to dispute the Notice by May 30, 2014.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

With respect to the Landlords request to retain or have the Tenant pay the security deposit this is an issue between the Landlord and the previous owner. It is the previous owner and the Landlord's responsibility to transfer the tenancy agreement and the security deposit at the time of sale. Consequently I dismiss the Landlord's request to retain the Tenant's security deposit.

Further as the Landlord has not applied for unpaid rent in this application I cannot make any decision or rulings about unpaid rent. The Landlord is at leave to reapply for unpaid rent and/or any loss or damage that the Landlord is able to prove.

I also find that as the Landlord was partially successful in this matter he is entitled to recover the filing fee of \$50.00 for this proceeding from the Tenant. The Landlord is entitled to a monetary order for \$50.00

Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$50.00** to recover the filing fee for this application and I grant an Order in that amount. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: September 30, 2014

Residential Tenancy Branch

