



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Associated Property Management (2001) Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, ET, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for landlord's use of property; for an order ending the tenancy earlier than a notice to end tenancy would take effect; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and called one witness who gave affirmed testimony. Two of the named tenants also attended and were represented by an agent. One of the tenants gave affirmed testimony, and the tenants called one witness who also gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The tenants provided evidentiary material beyond the time limit set out in the Rules of Procedure, however, with the consent of the landlord, that evidence is considered. No other issues with respect to service or delivery of documents or evidence were raised. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for landlord's use of property?

Should the tenancy end earlier than a Notice to End Tenancy given by the landlords would take effect?

Background and Evidence

The landlord's agent testified that this tenancy began on October 10, 2012 and the tenants still reside in the rental unit. The rental unit was owned by 3 landlords and one

landlord sold his portion during the tenancy. Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month and currently there are no rental arrears. At the outset of the tenancy, the landlord at the time collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlords. A copy of a tenancy agreement has been provided, which is signed on October 4, 2011 for a fixed term tenancy to begin on December 1, 2011 and to expire November 30, 2014 and then states that the tenancy will renew automatically for an additional 3 years and rent will be increased by \$200.00 per month for that second fixed term.

The landlord's agent further testified that one of the owners wishes to move into the rental unit, and the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property on August 11, 2014 by registered mail. A copy of the registered mail receipt has been provided. Also provided is a copy of the notice, which is dated August 11, 2014 and contains an expected date of vacancy of November 30, 2014. The reason for issuing the notice is: 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. The landlord currently lives across the road from the rental unit and the landlord's family will be occupying the rental unit.

The landlord's witness further testified that a previous hearing was held on August 22, 2012 wherein the landlord had applied for an Order of Possession for landlord's use of property, but the Arbitrator dismissed the application because there was a fixed term of the tenancy agreement, and although the property had sold, the tenancy agreement still applied. The fixed term ends on November 30, 2014 and the landlord seeks an Order of Possession effective that date.

The landlord's witness testified that he is a part-owner in the rental property and is aware of the tenancy agreement and its fixed term. He instructed the landlord's agent to issue the notice to end the tenancy because he and his spouse and 2 children will be occupying the rental unit. The current home of the landlord is a 3 bedroom house on 3 acres and the rental unit is a 3 bedroom house on 25 acres.

The tenant testified that the tenants made some improvements to the property and provided an invoice for that work. According to the invoice signed by one of the landlords and the tenancy agreement, the term of the tenancy is automatically extended to 2017 and the rental increase doesn't apply because the amount of the invoice for general labour completed by the tenants is to be deducted from rent payable. A copy of the invoice has been provided.

The tenant's witness testified that he was a previous owner of the rental property, and confirms that the invoice was signed by him while he was an owner, and that he had the authority to make that arrangement with the tenants.

Analysis

The *Residential Tenancy Act* specifically states that:

49 (8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(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, I have reviewed the notice to end tenancy issued by the landlord and I find that it is in the approved form and contains information required by the *Act*. I am also satisfied that the tenants were served with the notice by registered mail on August 11, 2014, which is deemed to have been served 5 days later, or on August 16, 2014. It is not sufficient for the tenants to attend a hearing wherein the landlord seeks an Order of Possession to dispute the notice. The tenants have not disputed the notice by making an application for dispute resolution, and therefore I have no discretion; the tenants are conclusively presumed to have accepted that the tenancy ends on November 30, 2014 and the tenants must vacate the rental unit by that date. I find that the landlord is entitled to an Order of Possession effective that date at 1:00 p.m.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee. I hereby grant a monetary order in favour of the landlord as against the tenants for that amount.

The landlord's application also seeks an order that the tenancy end earlier than a Notice to End Tenancy issued by the landlord would take effect. I find that there is no reason to end the tenancy earlier than set out in the 2 Month Notice to End Tenancy for Landlord's Use of Property, and that portion of the landlord's application is hereby dismissed.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective November 30, 2014 at 1:00 p.m.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00 as recovery of the filing fee.

The landlord's application for an order ending the tenancy early is hereby dismissed.

These orders are final and binding and may be enforced.

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: November 12, 2014

Residential Tenancy Branch

