



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP

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 1 Month Notice to End Tenancy for Cause (the “Notice”).

The Landlord, the Tenant and an agent for the Tenant appeared for the hearing. The parties provided affirmed testimony during the hearing. No issues in relation to the service of the Landlord’s Application under the *Residential Tenancy Act* (the “Act”) were raised by the parties.

Only the Tenant submitted documentary evidence in advance of the hearing. The Tenant’s agent explained that a copy of their documentary evidence had not been served to the Landlord due to the medical issues, for which no evidence had been provided. As a result, I decided only to consider the Notice as documentary evidence during the hearing.

The hearing process was explained and the participants were asked if they had any questions. Only the relevant facts related to the issues on the Landlord’s Application have been documented 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 February 1, 2014 on a month-to-month basis. No written tenancy agreement was signed but the Tenant paid the Landlord \$250.00 as a security deposit on February 1, 2014. Rent was established at \$500.00 per month payable by the Tenant on the first day of each month.

The Landlord testified that the Tenant was personally served with the Notice on October 1, 2014. The Notice shows an expected move out date of October 31, 2014 and states the reason for ending the tenancy is because the Tenant is alleged to have seriously jeopardized the health or safety or lawful right of the Landlord and put the Landlord's property at significant risk. The Notice is also signed and dated by the Landlord. However, the Landlord failed to complete the upper portion of the Notice which contains the Tenant's and Landlord's correspondence details.

The Tenant's agent confirmed that the Tenant had been personally served the Notice on October 1, 2014 and that the Tenant knew the Notice was intended for her and was completed by the Landlord. The Tenant's agent also confirmed that the Tenant had not made an Application to dispute the Notice but did not agree on the reasons why her tenancy was being ended. The Tenant's agent explained that they were hoping that because the Notice had not been completed properly by the Landlord and that it did not document the correct move out date, this would invalidate the Notice. The Tenant's agent explained that the Tenant had been looking for alternative accommodation but this had been difficult to find.

The Landlord was not willing to agree with the Tenant on a mutual agreement to end the tenancy that would allow her more time to vacate the rental suite and explained that he wanted to end the tenancy at the earliest time. The Landlord testified that the Tenant had already been given plenty of Notice as a result of a previous verbal and informal written notice to end the tenancy.

Analysis

Section 52 of the Act requires that in order for a Notice to be effective it must be: signed and dated by the Landlord; provide the effective date of the Notice; state the grounds for ending the tenancy and be in the approved form. I have examined the Notice and I find that it contains all of the required information stipulated by Section 52 of the Act. However, I considered the Tenant's agent's submissions regarding the validity of the Notice as follows.

Section 68(1) (a) of the Act allows the director to amend a Notice that does not comply with Section 52 of the Act if the person receiving the Notice knew or should have known the information that was omitted. While the Landlord did not include the correspondence details on the Notice, I find that the Tenant knew that the Notice was from the Landlord and that it was intended for her. Therefore, I find that the Tenant was not prejudiced in any way by the omission of these details and that the Notice is amended to include these details pursuant to the Act.

As explained on the second page of the Notice, an incorrect move out date does not invalidate a Notice either. In fact, the Act allows for this very situation when this arises as follows. Section 47(2) of the Act requires that a Notice 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 Tenant in October, 2014, the effective date of the Notice is automatically changed to November 30, 2014 pursuant to Section 53 of the Act, to allow for the required period of Notice.

Section 47(4) of the Act allows a Tenant to dispute a Notice by making an Application within ten days of receiving the Notice. Therefore, taking into consideration the provisions of the *Interpretation Act* which extends this time during weekends and holidays, the Tenant had until October 14, 2014 to make the Application to dispute the Notice, which she did not do.

Section 47(5) 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 Tenant failed to make an Application under the time limits stipulated by the Act, the tenancy will end on the corrected date of the Notice, being November 30, 2014. As a result, the Landlord's request for an Order of Possession is granted.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession which is effective at **1:00 p.m. on November 30, 2014**. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court 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: November 17, 2014

Residential Tenancy Branch

