



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for landlord's use of the property and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to have the Two Month Notice to End Tenancy cancelled?

Background and Evidence

The parties agreed that this month to month tenancy started on February 16, 2013. Rent for this unit is now \$1,000.00 a month due on the 1st of each month.

The landlord served the tenant with a Two Month Notice to End Tenancy for landlord's use of the property (the Notice). This was served upon the tenant by posting it to the tenant's door on October 28, 2014 and has an effective date of December 31, 2014.

The Notice informs the tenant that the unit will be occupied by landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The landlord testified that the tenant has paid rent for December by direct deposit and as the landlord had no control over this going into his bank the landlord will return the tenant's rent for December in compensation for the Notice. The landlord testified that he will be living in the rental unit.

The tenant seeks to dispute the Notice and agreed that she did not file her application to do so until November 20, 2014. The tenant testified that she could not do so any sooner as she was working.

Analysis

I refer the parties to page two of the Notice which states that the tenant has 15 days to file an application to cancel the Notice after it is assumed to be served. The Notice was posted to the tenant's door and therefore is deemed to have been served three days later on October 31, 2014. An Arbitrator can only extend the time the tenant has to file the application if the tenant has serious and compelling reason for not filing the application on time. The tenant testified that she could not take time off work to file her application within the 15 allowable days. I do not find this to be a serious or compelling reason for filing the application to cancel the Notice late.

It is my decision that the tenant's application was not filed in time and therefore the tenant is presumed to accept the end of the tenancy and must move out of the rental unit by the date set out on page one of the Notice. I find therefore, that the Notice under section 49 of the *Residential Tenancy Act (Act)* is upheld and the tenant's application to cancel the Notice is dismissed.

Section 55(1) of the *Act* states:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Consequently I find as the Notice has been upheld and the tenant's application is dismissed, the landlord is entitled to orally request an Order of Possession at the hearing. As such I grant the landlord an Order of Possession pursuant to s. 55(1) of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply. The Two Month Notice to End Tenancy for the landlord's use of the property will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on December 31, 2014. This Order must be served on the tenant and may be filed in the Supreme Court 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: December 17, 2014

Residential Tenancy Branch

