



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPC, OPB, O

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 cause and for breach of an agreement.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being individually served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 6, 2014, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord. The landlord testified that the tenants were served on that date and in that manner and has provided the Canada Post registered mail receipts bearing the names of the tenants and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided 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?

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for breach of an agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2011 and the tenants still reside in the rental unit. The tenants were tenants of the previous owner of the rental unit, and were tenants when the landlord purchased it in 2011. Rent in the amount of \$1,500.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. The landlord collected a security deposit from the tenants through the purchase and sale agreement with the previous owner in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit has been collected. A tenancy agreement was signed by the parties on March 6, 2011 and a copy has been provided for this hearing.

The landlord also testified that the tenants were served with a 1 Month Notice to End Tenancy for Cause on November 22, 2014 by personally handing a copy to one of the tenants as well as posting a copy to the door of the rental unit that day. A copy has been provided for this hearing, and the notice is dated October 22, 2014 and contains an effective date of vacancy of November 23, 2014. The reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent;
- Rental unit/site must be vacated to comply with a government order;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order

The landlord also testified that the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property by registered mail on November 21, 2014. A copy of that notice has also been provided, and it is dated November 19, 2014 and contains an effective date of vacancy of January 31, 2015. The reason for issuing the notice is:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Analysis

The *Residential Tenancy Act* states that documents served by posting to the door of the rental unit are deemed to be served 3 days after posting, and documents served by registered mail are deemed to be served 5 days after mailing. The *Act* also states that once a tenant is served, or deemed served with a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute the notice. If the tenant fails to do so, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date, which must be no sooner than 1 month after the date the tenant receives the notice. In this case, the landlord testified that the 1 Month Notice to End Tenancy for Cause was served by handing a copy to one of the tenants, and then again by posting it to the door of the rental unit on November 22, 2014. The tenants have not disputed the notice, however 10 days have not expired since the tenants were served.

With respect to the 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord testified that it was served by registered mail on November 21, 2014. That is therefore deemed to have been served on November 26, 2014. The *Act* states that a tenant must dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property within 15 days of receipt, and again I find that the time limit for the tenants to dispute the notice has not yet passed, and therefore the landlord is not entitled under the *Act* to an Order of Possession.

Since the time limits for disputing both notices has not yet expired, I dismiss the landlord's application with leave to reapply.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed with leave to reapply.

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 01, 2014

Residential Tenancy Branch

