



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and recovery of her filing fee. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed that the landlord served the tenants with a 2 month notice to end tenancy for landlord's use of property (the "Notice"). The landlord claimed that she served the Notice on January 1, 2015 while the tenants claimed that they did not receive the Notice until January 2.

The landlord seeks an order of possession based on the Notice as well as recovery of the filing fee.

Analysis

I find that the landlord served the tenants with the valid Notice on January 1st or 2nd, 2015. It is unnecessary for me to find exactly which date it was served as nothing turns on that one day difference. The tenants did not dispute the Notice and pursuant to section 49(9) of the Act are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. I find that the landlord is entitled to an order of possession.

Although the Notice states that the last day of the tenancy is February 28, 2015, the landlord did not serve the Notice in time to end the tenancy on that date. In order to end the tenancy on February 28, the landlord would have had to serve the Notice no later

than December 31, 2014. Section 53 of the Act operates to automatically correct the effective date to the earliest date that complies with the law. I find that the Notice is effective March 31, 2015 and I grant the landlord an order of possession effective that date.

As the tenants are not legally required to vacate the unit until March 31, it is unclear whether the landlord's application was necessary and for that reason I find that she should bear the cost of her filing fee.

Conclusion

The landlord is granted an order of possession effective March 31, 2015. This order 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: February 24, 2015

Residential Tenancy Branch

