



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with a landlord's application for an Order of Possession for cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

It should be noted that I was provided differing testimony with respect to service of the hearing packages and the landlord's evidence packages upon the tenants. The landlord testified that she served the hearing packages to all three tenants on April 9, 2015 by putting the packages at their feet in the presence of a police officer and a witness.

BK testified that she learned of this hearing from the co-tenants. DS testified that the hearing packages were thrown in the mud at his feet on April 1, 2015 and that he gave the other two co-tenants their copies of the hearing packages. SM testified that on April 9, 2015 the landlord served her with an evidence package but that she declined to accept the evidence packages intended for the other co-tenants.

The landlord's witness provided affirmed testimony that she observed the landlord place three yellow envelopes containing the hearing packages at DS's feet on April 1, 2015 with SM present and that she observed SM pick up all three envelopes. The landlord's witness testified that on April 9, 2015 the landlord, along with a police escort, attended the property and she observed the landlord give DS and SM the evidence packages.

Given I was provided different versions of events concerning service from all the participants, I turned to the tenants and I was able to confirm that they were aware the purpose of today's hearing and they confirmed that they had seen the landlord's evidence package. In light of all three co-tenants appearing at the hearing and I was satisfied that all three co-tenants were prepared to deal with the landlord's Application, I

deemed all three co-tenants sufficiently served with the landlord's Application and evidence package pursuant to the authority afforded under section 71 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The landlord testified that the month-to-month tenancy commenced March 1, 2015; the tenants paid a \$600.00 security deposit; and, the tenants are required to pay rent of \$1,500.00 on the 1st day of every month.

The tenants testified that they paid a security deposit of \$800.00 and that their monthly rent is \$1,600.00 per month. The tenants also testified that they never received a copy of a tenancy agreement. The landlord conceded that the tenants may be correct as far as the rent and security deposit as the tenants paid in cash.

The landlord testified that she served all three co-tenants with a 1 Month Notice to End Tenancy for Cause (the Notice) on March 20, 2015. The landlord could not recall if she served one copy of the Notice or multiple copies of the Notice. Eventually, the landlord described how she placed the Notice on the bed where all three co-tenants were laying. Included in the landlord's evidence package was a copy of a 1 Month Notice dated March 20, 2015 with a stated effective date of April 20, 2015.

Tenant BK testified that it was March 19, 2015 that the landlord entered their rental unit, barged past her and proceeded to the bedroom that DS and SM share and the landlord put a 1 Month Notice to End Tenancy for Cause on their bed. BK testified she was making a coffee and was not in bed with DS or SM as described by the landlord. BK testified that the 1 Month Notice served on March 19, 2015 is different than the 1 Month Notice that appears in the landlord's evidence package. I asked BK to read from the 1 Month Notice that she had in her possession.

BK described a 1 Month Notice that is consistent with a 1 Month Notice that is in the approved form, but claimed that it is dated March 19, 2015 below the landlord's signature and it has a stated effective date of May 1, 2015. I also noted that the some of the reasons for ending the tenancy that were read by BK were different than the reasons appearing on the 1 Month Notice included in the landlord's evidence package. Co-tenants DS and SM agreed that the 1 Month Notice that was described by BK is the Notice they were served.

BK testified that upon receipt of the Notice on March 19, 2015 she agreed to accept the tenancy would be at an end as of May 1, 2015. Co-tenants DS and SM also testified that they are about to secure storage for their belongings in preparation of moving out of the rental unit. None of the tenants filed to dispute the Notice they acknowledge receiving on March 19, 2015 but point out that the landlord's evidence appears to be fraudulent as the Notice in the landlord's evidence package is not the same as the Notice they were served.

The landlord acknowledged that the Notice described by BK is the Notice that the tenants were served. The landlord explained that when she prepared the Notice to serve upon the tenants she did not have a photocopier so she prepared another copy after serving them from memory. The landlord acknowledged that it is possible the copy included in her evidence package is somewhat different than that actually received by the tenants. The landlord pointed out that page 2 of the Notice provides that an error on the Notice does not automatically invalidate the Notice.

During the hearing, the landlord orally requested than an Order of Possession be provided for a date that is earlier than the date indicated on the tenant's copy of the Notice. The landlord submitted that under the Act I may provide an Order of Possession that is on a date that is different that the effective date of the Notice. The landlord submitted that she wanted to file an Application for an early end of tenancy and that since serving the tenants with the Notice she is in fear for her safety, the safety of her son, and the damage that the tenants may cause to the property by way of fires and drugs. The landlord was informed of her right to file an Application to seek an early end of tenancy but that the purpose of this hearing, for which the tenants have been put on notice, is to deal with the Notice to End Tenancy that she served upon them.

The tenants submitted that they are willing to move out of the rental unit sooner than the effective date of May 1, 2015 upon return of their security deposit. The landlord was not agreeable to returning the security deposit as the tenants had not paid rent for April 2015.

Analysis

When a tenant is served with a 1 Month Notice to End Tenancy for Cause the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the

tenant does not file to dispute the Notice, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted the end of tenancy and must vacate the rental unit by the effective date of the Notice.

Based upon the undisputed testimony of the tenants, I am satisfied the tenants received a 1 Month Notice to End Tenancy for Cause in the approved form on March 19, 2015 with a stated effective date of May 1, 2015. Since the tenants testified that they accepted the end of tenancy and did not file to dispute the Notice, I find the tenancy is set to end pursuant to that Notice.

Under section 47 of the Act, the effective date of a 1 Month Notice must be no earlier than:

- At least one month after the Notice is given; and,
- The day before rent is payable under the tenancy agreement.

In this case, the rent is payable on the 1st day of every month and since the Notice was given on March 19, 2015 I find that in order to comply with section 47 of the Act, the earliest effective date for the 1 Month Notice is April 30, 2015. Section 53 of the Act provides that an incorrect effective date does not invalidate a Notice to End Tenancy but that a stated effective date that is earlier than the effective date required by law automatically corrects to the date that complies. If, however, the landlord gives a tenant a longer notice period the effective date is the longer notice period. Since the landlord served the tenants with a Notice with a longer notice period that was required under section 47, **I find the tenancy ends effective May 1, 2015 as stated on the Notice served upon the tenants by the landlord.**

Section 55 of the Act also provides that the Director, as delegated to an Arbitrator, may provide an Order of Possession that is effective earlier or later than the date a tenant is required to vacate a rental unit. The landlord requested that I provide an Order of Possession that is effective earlier than the date the tenants are required to vacate pursuant to their Notice to End Tenancy; however, I decline to consider that request for the following reasons:

- The Act provides a landlord a remedy where it is unreasonable to wait for a 1 Month Notice to End Tenancy to take effect which is to file an Application for an early end of tenancy under section 56 of the Act and the landlord had not made such an Application as of the time of this proceeding;

- The tenants relied upon and accepted the Notice to End Tenancy that was served upon them with a stated effective date of May 1, 2015; and,
- I find that to consider the landlord's oral request made at the hearing would violate the principles of natural justice as the landlord did not give the tenants prior notice that she would be making such a request during this hearing by way of her Application, an amended Application, her evidence package, or any other written communication to the tenants.

In light of all of the above, I provide the landlord with an Order of Possession effective at 1:00 p.m. on May 1, 2015 to serve upon the tenants. The landlord remains at liberty to file an Application for an early end of tenancy and Order of Possession under section 56 of the Act if she so chooses.

The landlord did not request recovery of the filing fee and I make no such award.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on May 1, 2015 to serve upon the tenants.

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: April 16, 2015

Residential Tenancy Branch

