



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 his filing fee. Both parties participated in the conference call hearing with the tenants being represented by the female tenant, NC. In this decision where I refer to the tenants in the singular form, it is NC to whom I refer.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The facts are not in dispute. The tenancy was originally set for a 6 month fixed term which expired and converted to a month to month tenancy. On February 22, the landlord served the tenants with a 2 month notice to end tenancy for landlord's use of the property (the "Notice"). The tenants did not dispute the Notice.

The tenant argued that she has experienced severe health issues which prevent her from moving at this time. She further argued that she and her husband are in the process of finding a home to purchase and have placed offers on several homes, but was unable to secure those homes. The tenant asked that the Notice not be effective until at least May 31 but preferably several months later in order to give her family time to secure alternate accommodation.

The landlord testified that the home in which he currently resides has been sold and he needs to move into the rental unit in May.

Analysis

I find that the tenants received the Notice on February 22 and chose not to dispute it. Section 49(9) provides as follows:

49(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

49(9)(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

49(9)(b) must vacate the rental unit by that date.

I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. While I appreciate that vacating the unit will create a disruption in the tenants' lives, the landlord is legally entitled to end a month to month tenancy with 2 months' notice and I accept that he needs to move into the rental unit in May as his other residence has been sold. I therefore find that it is appropriate to set the end of tenancy at April 30, 2015 as per the effective date of the Notice.

I grant the landlord an order of possession effective on April 30, 2015. This order must be served on the tenants. Should the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord has been successful in his claim, I find he should recover the filing fee paid to bring his application and I award him \$50.00. The landlord may deduct \$50.00 from the security deposit. The balance of the deposit should be dealt with in accordance with the provision of the Act at the end of the tenancy.

Conclusion

The landlord is granted an order of possession effective April 30 and will deduct \$50.00 from the security deposit.

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 21, 2015

Residential Tenancy Branch

