



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession for landlord's use of property and to recover the filing fee from the tenants for the cost of the application.

Both landlords attended the hearing, one of whom gave affirmed testimony. However, despite one of the named tenants being personally served with the Landlord's Application for Dispute Resolution and notice of this hearing on April 17, 2015, 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 participants who joined the call were the landlords. The landlord testified that the tenants were served on that date and in that manner while another of the tenants was also present, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for the landlords' use of the rental property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 2, 2012 and the tenants still reside in the rental unit. Rent in the amount of \$1,800.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$900.00 which is still held in trust by the landlords and no pet damage deposit was collected.

The landlord further testified that the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on January 29, 2015. The landlord personally handed the notice to one of the tenants on that date, and has provided a Proof of Service document which is witnessed by the other landlord. A copy of the notice has also been provided and it is dated January 29, 2015 and contains an effective date of vacancy of April 1, 2015. The reasons for issuing the notice are:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse;
- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord testified that the landlords' son will be moving into the rental unit, however there are damages that require repair before that.

The tenants have not served the landlords with an application for dispute resolution and have not moved out of the rental unit. The landlords seek an Order of Possession effective June 30, 2015 to give the tenants time to find another home. The tenants have not yet been provided with compensation required under the *Act*.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant has 15 days to dispute it. If the tenant does not, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date, which must be no less than 2 months after service. In this case, I am satisfied that the tenants were served with the notice on January 29, 2015 and did not dispute the notice, and therefore the tenants are conclusively presumed to have accepted the end of the tenancy. The landlord has requested an Order of Possession effective June 30, 2015, and I so order.

The *Residential Tenancy Act* also states that a landlord who serves such a notice on the tenant must also provide the tenant with compensation equivalent to one month's rent. The landlord has not yet done that, and I order that the landlords provide that to the tenants by way of collecting no rent for the month of June, 2015, or by some other means.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee, which I order the landlords retain from the security deposit.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective June 30, 2015 at 1:00 p.m.

I further order the landlords to comply with the *Residential Tenancy Act* by providing the tenants with compensation equivalent to one month's rent, or \$1,800.00, by collecting no rent for the month of June, 2015 or by some other means.

I further order the landlords to keep \$50.00 of the \$900.00 security deposit as recovery of the filing fee.

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: May 28, 2015

Residential Tenancy Branch

