



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, ERP, RP, LRE

Introduction

This hearing was scheduled for 9:30 a.m. on today's date, via teleconference call, to hear a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, and more time to make the application; and, orders for repairs, emergency repairs and to suspend or set conditions on the landlord's right to enter the rental unit. The landlord was present at the commencement of the hearing and there was no appearance by or on behalf of the tenant despite leaving the teleconference call open for more than 20 minutes.

The landlord confirmed that he was served with the tenant's Application for Dispute Resolution and was prepared to respond to the matters raised by the tenant. Since the tenant failed to appear at the hearing I dismissed the tenant's application in its entirety.

The landlord orally requested an Order of Possession during the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord and two co-tenants entered into a month to month tenancy that commenced on May 1, 2015. The tenants are required to pay rent of \$1,450.00 on the 1st day of every month.

On June 5, 2015 the landlord issued a document to the tenants in an attempt to end the tenancy. The document was posted on the door of the rental unit and sent to the tenants via registered mail on June 5, 2015. Shortly thereafter the landlord realized that he needed to issue a Notice to End Tenancy in the approved form in order to end the

tenancy and on June 6, 2015 he issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* in the approved form with a stated effective date of August 8, 2015 (the 2 Month Notice). The 2 Month Notice was posted on the door of the rental unit and sent to the tenants via registered mail on June 6, 2015. A copy of the 2 Month Notice was included in the landlord's evidence package.

The landlord submitted that the tenants have not paid any rent since May 2015. The landlord confirmed that he has not yet served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord remains at liberty to serve a 10 Day Notice if rent remains outstanding but that I could not end the tenancy for unpaid rent when the only Notice to End Tenancy before me and is the subject of this hearing is a 2 Month Notice. I also informed the landlord that I could not deal with a landlord's monetary claim under a tenant's Application and that the landlord is at liberty to make his own Application for Dispute Resolution to deal with unpaid rent or any other damages or losses related to this tenancy.

Analysis

Section 55(1) of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a Notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

In this case, the tenant filed to cancel a Notice to End Tenancy and the application was dismissed. The landlord also orally requested an Order of Possession during the scheduled hearing. Therefore, I am satisfied the criteria of section 55(1) have been met and I provide the landlord with an Order of Possession with this decision.

Since the tenants are required to pay rent on the 1st day of the month, the effective date for a 2 Month Notice served in June 2015 would have to be no sooner than August 31, 2015 pursuant to section 49 of the Act. An incorrect effective date does not invalidate a Notice to End Tenancy. Rather, section 53 of the Act provides that the effective date automatically changes to comply. Therefore, I provide the landlord with an Order of Possession that is effective at 1:00 p.m. on August 31, 2015.

Conclusion

The tenant's application has been dismissed. The landlord has been provided an Order of Possession effective at 1:00 p.m. on August 31, 2015 to serve and enforce.

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: August 06, 2015

Residential Tenancy Branch

