



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF (Landlord's Amended Application)
 CNL, AAT, LAT, FF (Tenant's Application)

Introduction

This hearing convened as a result of cross applications.

In the Landlord's Application for Dispute Resolution filed on September 15, 2015 she sought an Order of Possession based on a 2 Month Notice to End Tenancy for Landlord's Use issued on August 31, 2015 (the "2 Month Notice"), an Early End to Tenancy and to recover the filing fee.

In the Tenant's Application for Dispute Resolution filed on September 9, 2015 she sought an Order canceling the 2 Month Notice, an Order allowing her, or her guests, access to the rental unit, an Order authorizing her to change the locks and to recover the filing fee.

On October 26, 2015 the Landlord amended her Application for Dispute Resolution to claim an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on September 15, 2015 (the "1 Month Notice") and to recover the filing fee. The Landlord testified she personally served the Tenant with the Amended Application for Dispute Resolution on October 26, 2015.

Both parties attended at the hearing.

The Landlord attended on her own behalf and had available to testify her sister, T.Y. The Landlord also called M.S., a housing outreach worker, as a witness. M.S. was excluded from the hearing until her testimony was required.

The Tenant attended on her own behalf and had as moral support, her daughter, K.T. K.T. indicated that her boyfriend, M.C., was also available to testify as a witness if necessary. It was unclear whether he was in the room, or available on the telephone if

necessary, despite my clear statement that witnesses needed to be excluded. Also at the beginning of the hearing, the Tenant's son, J.O., and his infant child were in the room with the Tenant. The Tenant stated that they left the room prior to the hearing being conducted.

Issues to be Decided

1. Should the 2 Month Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession based on the 1 Month Notice?
3. Is the Tenant entitled to an Order permitting her, or her guests, access to the rental unit?
4. Is the Tenant entitled to change the locks on the rental unit?
5. Should either party recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that the tenancy was for a fixed one year term.

The Landlord issued the 2 Month Notice on August 31, 2015.

The Landlord issued the 1 Month Notice on September 15, 2015. The Landlord initially testified that she personally served the Tenant on September 30, 2015. Later in her testimony she stated she in fact served the Tenant on September 15, 2015 after filing her Application for Dispute Resolution at the residential tenancy branch.

The Landlord called as a witness M.S. who confirmed she was present when the Tenant was personally served with the 1 Month Notice. She stated that she could not recall the precise date but believed it was September 30, 2015. She further testified that the Landlord wished to ensure she gave the Tenant 30 days notice as required by the 1 Month Notice, and that accordingly she believed it was at the end of September 2015

The Tenant could not testify as to when exactly she received the 1 Month Notice; however, she was able to confirm that she was personally served the 1 Month Notice by the Landlord. As well, she was able to provide specific details as to the contents of the 1 Month Notice as she read it during the hearing. Based on her responses it was clear

that she was not referring to the copy which was contained in the Landlord's Amended Application for Dispute Resolution hearing package, rather she was referring to the 1 Month Notice which was served on her.

The Tenant confirmed that she did not apply to cancel the 1 Month Notice. She stated that she believed her application made on September 9, 2015 was sufficient to cancel both the 1 Month Notice and the 2 Month Notice.

Analysis

The Landlord confirmed that when she amended her application for dispute resolution, she no longer sought an Order of Possession based on the 2 Month Notice.

Although the Landlord did not request an Order based on the 2 Month Notice, the Tenant's application to cancel the 2 Month Notice remained before me.

Pursuant to section 49(2)(c), a Landlord may not end a fixed term tenancy with a 2 Month Notice prior to the expiration of the fixed term. Accordingly, the 2 Month Notice is cancelled.

Based on the documentary evidence, the testimony of the participants, and on the balance of probabilities, I find the following.

I find the Tenant was served with the 1 Month Notice on or before September 30, 2015.

The Tenant did not apply to dispute the 1 Month Notice and is conclusively presumed, pursuant to section 47(5) to accept the end of the tenancy and must vacate the rental unit. The Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* which will be effective at **1:00 p.m.**, two days after service. This Order must be served on the Tenant and may be filed in the Supreme Court and enforced as an Order of that court.

As parties enjoyed mixed success, neither party shall recover the fee paid to file their application.

As the tenancy is ending, it is not necessary to make an Order that the Tenant be permitted to change the locks, or provide access to the rental unit for her or her guests. Those applications are accordingly dismissed.

Conclusion

The 2 Month Notice is cancelled. The Tenant did not apply to cancel the 1 Month Notice and the Landlord is entitled to an Order of Possession based on the undisputed 1 Month Notice. All other claims are dismissed.

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: November 10, 2015

Residential Tenancy Branch

