



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, FF

Introduction

On November 04, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Landlord's Use of Property. At the outset of the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated. He stated that the Landlord still wishes to recover the fee for filing the Application for Dispute Resolution.

The Agent for the Landlord stated that on November 05, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to the male Tenant. The Tenants acknowledged receipt of these documents.

On December 23, 2015 the Tenant submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The parties attending the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to recover the fee paid to file this Application for Dispute Resolution?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on November 12, 2012. The female Tenant stated that the tenancy began on December 15, 2012.

The Agent for the Landlord stated that a Two Month Notice to End Tenancy for Landlord's Use of Property was posted on the door of the rental unit on August 27,

2015. He stated that this Notice declared that the Tenants must vacate the rental unit by October 31, 2015.

The female Tenant stated that the Tenants did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property prior to vacating the rental unit.

The Agent for the Landlord stated that this tenancy ended on November 22, 2015. The female Tenant stated that the tenancy ended on November 15, 2015.

The female Tenant stated that the Tenants vacated the rental unit because on November 01, 2015 the Landlord told them they were required to vacate. She stated that neither party gave written notice to end the tenancy prior to November 01, 2015.

In support of his testimony that the Notice to End Tenancy was posted on the door of the rental unit, the Agent for the Landlord stated that there was a hearing on December 14, 2015 and that during the hearing the Tenants acknowledged receiving the Notice to End Tenancy in evidence submitted for those proceedings. The female Tenant disputes this submission. Both parties agreed that I could review the decision of December 14, 2015 prior to rendering a decision in these proceedings.

Analysis

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that a Two Month Notice to End Tenancy was posted on the door of the rental unit on August 27, 2015.

On the basis of the testimony of the female Tenant and in the absence of evidence to the contrary, I find that prior to vacating the rental unit on November 01, 2015 the Tenants did not receive the Two Month Notice to End Tenancy that was posted on the door of the rental unit on August 27, 2015.

I find it entirely possible that both parties are being truthful in regards to the Notice to End Tenancy, as it is possible that the Notice to End Tenancy that was posted on the door was removed from the door by a third party or by natural causes.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As I cannot conclude that the Tenants received the Notice to End Tenancy, I cannot conclude that the Tenants were obligated to vacate the rental unit on the declared effective date of the Notice.

I have placed no weight on the Agent for the Landlord's testimony that the Tenants acknowledged receiving the Notice to End Tenancy at a proceeding on December 14, 2015. As the female Tenant disputed this submission; there is nothing in the written decision from those proceedings that corroborates the Landlord's submission; and I do

not recall that issue being discussed at the hearing on December 14, 2015, over which I presided, I find the submission has no evidentiary value.

I note that it is possible the Tenants acknowledged receiving the Two Month Notice to End Tenancy in documents submitted for the hearing on December 14, 2015; however I did not review those documents because that Application for Dispute Resolution was withdrawn by the Applicants.

As I cannot conclude that the Tenants received the Notice to End Tenancy and were obligated to vacate the rental unit on the declared effective date of the Notice, I would have dismissed the Landlord's application for an Order of Possession in the event the application for an Order of Possession had not been withdrawn.

As I would have dismissed the application for an Order of Possession, I must also dismiss the Landlord's application to recover the filing fee.

Conclusion

The Landlord's application to recover the filing fee is 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: January 06, 2016

Residential Tenancy Branch

