



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL CNL MT FF

Introduction:

Both parties made Applications. Both parties attended. The landlord said he served personally the Notice to end Tenancy dated December 31, 2015 and his brother was present. The tenants said they got a letter from the landlord on December 31, 2015 regarding the Bylaw and that he was going to end the tenancy on a two month Notice. However, they gave sworn evidence that they were never served with the Notice to End Tenancy on December 31, 2015 but said they got it in the Application of the landlord which was served personally on March 4, 2016. The tenants request the additional time to file their Application to dispute as they did not get the Notice to End Tenancy until March 4, 2016. Both parties acknowledged receiving each other's Applications for Dispute Resolution. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for an Order of Possession pursuant to Sections 49 and 55 and to recover the filing fee pursuant to Section 72.

The tenant requests more time to file their Application, to cancel the Notice to End Tenancy and to recover their filing fee. They also request that the Notice to End Tenancy for landlord's use of the property be set aside as it was not served until March 4, 2016 and it is incorrect as the landlord did not have all the permits necessary from the City.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated December 31, 2015 for landlord's use of the property. Is the landlord now entitled to an Order of Possession?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced

October 1, 2013, a security and pet damage deposit of \$1000 was paid and rent is currently \$1450 a month. The landlord provided in evidence a Notice to End Tenancy dated December 31, 2015 for landlord's use of the property wherein he checked the box that stated he had all the permits and approvals required by law to demolish the rental unit or repair it in a manner that requires it to be vacant. He provided a Building Permit from the City shown as issued February 19, 2016.

The tenant claims this was a false notice as the landlord did not have his permits by December 31, 2015. The landlord said they submitted an Application in early December but the City was busy and there were holidays so there was a delay. Furthermore, the tenant claims that the landlord did not serve the Notice to End Tenancy but enclosed it with the Application for Dispute Resolution which was received on March 4, 2016. The tenant requests the Notice be set aside.

The options were discussed with the parties but mediation was unsuccessful.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Pursuant to sections 88 and 89 of the Act, a Notice to End Tenancy may be served personally or by posting it on the door as well as other methods. The testimony of the tenant and the landlord is conflicting with regard to the service of the Notice. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find the weight of the evidence is that the landlord gave the tenants a letter outlining problems with the tenancy and saying he planned to end it on two months notice on December 31, 2015. He said to 'the best of his knowledge' he served the Two Month Notice to End Tenancy on that same date with his brother in attendance. I find insufficient evidence to support his statement that he served the Notice on December 31, 2015. He filed no Proof of service, he seemed unsure in the hearing and his brother did not attend the hearing to witness service. The tenant said they were not aware of the provision of one month's free rent pursuant to section 51 although the landlord said he informed them of this also and they never got the Notice to End Tenancy until March 4, 2016 when it was in the evidence package for the landlord's Application for Dispute Resolution.

In any case, even if the landlord did serve the Notice on December 31, 2015, I find it was premature as the evidence is he did not receive the permits until February 19, 2016 from the City. The Notice provides that the reason for ending the tenancy is that the landlord requires the property and he has all the permits required. I find he did not have

them when he prepared his Notice to End Tenancy and allegedly served it. I set aside the Notice to End Tenancy dated December 31, 2015 with leave to reapply to the landlord.

The tenant did not file their Application until March 14, 2016 which I find consistent with their submission that they did not get the Notice to End Tenancy until March 4, 2016 when the landlord's Application was served. Therefore, I allow them the additional time needed to file their Application as, based on the weight of the evidence, it was filed within the 10 days of receipt of the Notice in accordance with section 49 of the Act.

Conclusion:

I dismiss the Application of the landlord with leave to reapply. I find he is not entitled to recover his filing fee due to lack of success. I cautioned the landlord to ensure he obtains proof of service of future documents.

I set aside the Notice to End Tenancy dated December 31, 2015 as it was premature. The tenancy continues. As the tenant was successful, I find they are entitled to recover their filing fee.

I HEREBY ORDER that the tenant may deduct \$100 from their rent to recover 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: April 06, 2016

Residential Tenancy Branch