



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF; O

Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for landlord's use, pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- an extension of time to vacate the rental unit for compassionate reasons.

The landlord did not participate in the conference call hearing, which lasted approximately 20 minutes. Tenant DW, and tenant MW attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Tenant DW testified that on March 31, 2016 he forwarded the tenants' application for dispute resolution via registered mail to the landlord. The tenants provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenant DW and in accordance with sections 89 and 90 of the Act, I find that the landlord has been deemed served with the application on April 5, 2016, the fifth day after their registered mailing.

The tenants confirmed personal receipt of the landlords 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), dated March 14, 2016 on the same date. In accordance with section 88 of the Act, I find that the tenant was duly served with the landlord's 2 Month Notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the tenant entitled to an extension of time to vacate the rental unit due to compassionate reasons?

Background and Evidence

The rental unit consists of an upper level unit in which the landlord resides and a lower unit in which the tenants reside. Tenant MW testified that this tenancy began on September 1, 2011 for a fixed term ending on August 31, 2012 after which time it became a month-to-month tenancy. Monthly rent in the current amount of \$1,450.00 is payable on the first day of each month. A security deposit of \$700.00 and pet deposit of \$200.00 was remitted at the start of the tenancy. The tenants continue to reside in the rental unit.

On March 14, 2016 the landlord issued the 2 Month Notice, indicating that the rental unit will be occupied by the landlord or landlord's close family member. The tenant testified that they understood the landlord's daughter was moving into the rental unit with her family. The notice indicates an effective move-out date of May 31, 2016.

The tenants provided evidence in the form of Doctor's notes verifying the ill health of tenant DW and the tenants dog.

Analysis

The landlord did not attend the hearing accordingly, the landlord's entire application is dismissed with leave to reapply.

There is no provision in the Act that allows a tenant to extend time to vacate a rental unit for compassionate reasons. The tenants did not file an application to cancel the 2 Month Notice, nor did they amend the application to reflect this. Because the tenants did not dispute the 2 Month Notice, they are conclusively presumed to have accepted that the tenancy ended on the effective date of the 2 Month Notice. Based on this, I find the 2 Month Notice remains in effect and the tenants must vacate the rental unit on May 31, 2016.

Conclusion

The landlord's application is dismissed with leave to reapply.

The tenants' application is dismissed without leave to reapply.

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 29, 2016

Residential Tenancy Branch