



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB

Introduction

This is an application brought by the Landlord(s) requesting an Order of Possession based on a Notice to End Tenancy given for breach of a material term of the tenancy agreement.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the landlords have established the right to an Order of Possession.

Background and Evidence

This tenancy began on September 22, 2015 and the present monthly rent is \$585.00 due on the first of each month.

The landlord testified that this is a non-smoking unit and even after receiving warning letters the tenant continued to smoke in the unit, and therefore on March 31, 2016 he was personally served with a one-month Notice to End Tenancy for breach of a material term of the tenancy agreement.

The landlord further testified that the tenant has not filed any dispute of the notice and all rent collected, since the notice was given, was accepted for use and occupancy only.

The landlords are therefore requesting an Order of Possession for as soon as possible.

The tenant testified that he believes the Notice to End Tenancy is void because he has paid rent after the date that the notice was given, and the landlord has signed a new tenancy agreement with him.

Analysis

It is my finding that the landlords do have the right to an Order of Possession, based on a Notice to End Tenancy that was served on the tenant.

Section 47(5) of the Residential Tenancy Act states:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

In this case the tenant did not make an application for dispute resolution and therefore is conclusively presumed to have accepted that the tenancy ends.

The tenant has argued that he believed the Notice to End Tenancy was void; however it's my finding that it's reasonable for the landlord to collect rent from the tenant while waiting for the dispute resolution hearing, and doing so does not reinstate tenancy.

Further, although the tenant claims that the landlords have entered into a new tenancy with him, he has provided no evidence of that new tenancy, and the landlords testified that they have agreed to use and occupancy only of the rental unit while waiting for the dispute resolution hearing.

I therefore have issued an Order of Possession to the landlords pursuant to section 47 and 55 of the Residential Tenancy Act.

I also allow the landlords request for recovery of the \$100.00 filing fee.

Conclusion

Pursuant to section 55 of the Residential Tenancy Act, I have issued an Order of Possession that is enforceable two days after service on the tenant.

Pursuant to section 72 of the Residential Tenancy Act, I have issued a monetary order in the amount of \$100.00.

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: June 21, 2016

Residential Tenancy Branch