Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL FF

Introduction:

Only the landlord attended the hearing and gave sworn testimony. She testified that the Notice to End Tenancy dated June 30, 2016 to be effective August 31, 2016 was served by posting it on the door on June 30, 2016 and the Application for Dispute Resolution was served personally. As the Notice to End Tenancy was posted on the door, it is deemed to be served 3 days later so the effective date on the Notice is automatically corrected to September 30, 2016 pursuant to section 53 of the Residential Tenancy Act as a two month Notice to End Tenancy must give a full two month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. I find the documents were legally served for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

    a) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55;

    b) To obtain a monetary order for over holding rent;

    c) To retain the security deposit to offset the amount owing; and

    d) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and they are entitled to an Order of Possession and a monetary order for over holding rent? Is the landlord entitled to recover the filing fee?

Background and Evidence

Only the landlord's representative attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 2016, it is a month to month tenancy, rent is $500 a month and a security deposit of $250 was paid. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

    a)   The landlord requires the property for their own use for occupancy by the landlord or the landlord's spouse or close family member (father, mother or child) of the landlord or the landlord's spouse.

The landlord said they live upstairs and now require this unit for their own use as they have children. She said the tenant has not paid any rent since July 2016 and requests a monetary order for over holding rent. The tenant did not file an Application or attend to dispute the notice.

Included with the evidence is the Notice to End Tenancy and witness statements as to service. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The Notice to End Tenancy was served pursuant to section 49 of the Act for the landlord's own use of the property. I find the landlord's evidence credible that they have need of the unit for their own use. As the tenant did not file a dispute to the Notice, pursuant to section 49((9), he is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I find the landlord entitled to an Order of Possession effective two days from service.

Pursuant to the section 49 Notice, I find the tenant was entitled to one month's free rent. However, the evidence is that he has paid no rent for 4 months (August to November, 2016). I find the landlord entitled to a monetary order for 3 months rent or $1500 plus the filing fee.

Conclusion:

I find the landlord entitled to an Order of Possession and a monetary order as calculated below. I find her entitled to recover filing fees for this application and to retain the security deposit to offset the amount owing.

3 months over holding rent	1500.00
Filing fee	100.00
Less security deposit (no interest 2016)	-250.00
Total Monetary Order to Landlord	**1350.00**

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: November 24, 2016

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Residential Tenancy Branch