



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

The Landlord filed their application for dispute resolution on October 11, 2016 seeking an Order of Possession for landlord's use of the property. In the Landlord's October 17, 2016 evidence submission they included a monetary order worksheet indicating they were seeking compensation in the amount of \$2,450.00.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 4.1* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application in accordance with section 89 of the *Act* [emphasis added with bold text].

In this case the Landlord did not file an amended application and simply listed the additional claim requests in their evidence. Accordingly, I declined to hear matters which involved a monetary amount not claimed on the original application. I proceeded to hear the matters pertaining to the Landlord's request for an Order of Possession.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession?

Background and Evidence

The parties entered into a month to month written tenancy agreement which began in August 2015. Rent of \$750.00 was payable on or before the first of each month. In August or July 2015 the Tenant paid \$375.00 as the security deposit plus \$375.00 as the pet deposit.

On July 30, 2016 the Landlord personally served the Tenant with a 2 Month Notice to end tenancy for landlord's use. That notice was issued on the prescribed form listing an effective date of September 30, 2016 for the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of the that individual's spouse)

The Tenant confirmed receipt of the 2 Month Notice. She testified she did not dispute the Notice as she had intended to vacate the unit; however, she has not yet found a place to move to.

The Landlord requested possession for as soon as possible so that his son may move into the unit.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Upon review of the 2 Month Notice to End Tenancy issued July 30, 2016, I find that it was issued and served upon the Tenant in a manner that complies with the *Act*.

Section 49(8) of the *Act* stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

In this case the Tenant would have had to file their application for dispute no later than August 14, 2016. At the time the Landlord filed their application for an Order of Possession on October 11, 2016 the Tenant had not made application to dispute the 2 Month Notice.

Section 49(9) of the *Act* stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with

subsection (8), 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.

Based on the aforementioned, I find the Landlord provided sufficient evidence to prove his application. Accordingly, the Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act. The Landlord has been issued a Monetary Order in the amount of \$100.00.

The parties are reminded of the provisions of section 72(2)(b) of the *Act*, which authorizes a landlord to deduct any amount the director orders a tenant to pay to a landlord, from the security deposit, which in these circumstances is \$100.00.

Conclusion

The Landlord was successful with is application and was granted an Order of Possession and recovery of his filing fee.

This decision is final, legally binding, and 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: December 02, 2016

Residential Tenancy Branch