



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with the landlord's application for an Order of Possession based upon a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants did not appear at the hearing. The landlord testified that she left the hearing packages in the tenants' mailbox on November 7, 2016 in the presence of her adult son as a witness to service. The landlord also stated that it appears the tenants are in the process of moving out but the landlord wanted to make sure she regains possession on December 31, 2016. Applications for Dispute Resolution must be served upon the respondent in a manner that complies with section 89 of the Act. Although placing the hearing packages in the mailbox does not comply with section 89 considering I heard that the tenants are in the process of moving out, I was reasonably satisfied that they would not be prejudiced by proceeding to hear this Application. Therefore, I deemed the tenants sufficiently served with the hearing packages three days after the documents were placed in the mailbox pursuant to the authority afforded me under section 71 of the Act and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of property?

Background and Evidence

The landlord testified that the tenancy started approximately 11 years ago and the tenancy is on a month to month basis. The current monthly rent of \$1,628 was due on the first day of every month. On October 17, 2016 the landlord placed a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) in the tenants' mailbox in the presence of a witness.

The landlord provided a copy of the 2 Month Notice and a Proof of Service signed by the landlord and the witness on October 17, 2016. The 2 Month Notice has a stated

effective date of December 31, 2016 and the copy provided to me has been duly completed, including a reason for ending the tenancy on the second page.

The landlord testified that approximately a week after leaving the 2 Month Notice in the tenants' mailbox she contacted the tenants to confirm they had received it. The male tenant told the landlord he had not seen it so the landlord delivered another copy to the tenants. The tenants did not file to dispute the 2 Month Notice. The landlord confirmed that the tenants did not pay rent for December 2016 in satisfaction of the compensation they are entitled to under the Act and she understands the tenants are currently in the process of moving out.

The landlord seeks an Order of Possession with an effective date of December 31, 2016 as indicated on the 2 Month Notice to ensure she regains possession of the rental unit on December 31, 2016.

Analysis

Section 55(2) of the Act provides for circumstances where a landlord may request an Order of Possession. The landlord is making this application under section 55(2)(b) which I have reproduced below:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Upon review of the 2 Month Notice provided to me, I am satisfied it meets the form and content requirements of the Act. Based upon the unopposed evidence I am also satisfied that the 2 Month Notice was served upon the tenants by placing it in their mailbox and that method of service is permitted for serving Notices to End Tenancy under section 88 of the Act. Therefore, I find the tenants are required to return vacant possession of the rental unit to the landlord by 1:00 p.m. on December 31, 2016 and I find the landlord entitled to an Order of Possession as requested.

Provided to the landlord with a copy of this decision is an Order of Possession that is effective at 1:00 p.m. on December 31, 2016.

Conclusion

The landlord has been provided an Order of Possession that is effective at 1:00 p.m. on December 31, 2016.

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: December 21, 2016

Residential Tenancy Branch