



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession pursuant to a notice to end tenancy for landlord's use of property and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession and to the recovery of the filing fee?

Background and Evidence

The landlord is the tenant's father. The tenant moved into the rental property in July 2013. The tenant stated that since he pays the mortgage, utilities and property taxes, he owns part of the home. The tenant agreed that his father is the sole owner on title. The tenant testified that he deposited \$2,470.00 into his father's bank account every month on the first, which is used to pay the mortgage, utilities and property taxes. He also stated that he had purchased the house initially which was then transferred to his father when he was involved in a divorce.

The landlord stated that on November 21, 2016, he served the tenant with a notice to end tenancy for landlord's use of property, by posting the notice on the front door of the rental unit. The landlord also mailed the notice on November 21, 2016, by registered mail and provided copies of the tracking slip.

The notice is in the standard approved two page format with an effective date of January 28, 2017. The tenant did not dispute the notice. The landlord has applied for an order of possession and agreed to let the tenancy continue to February 28, 2017.

Analysis

Based on the sworn testimony and documentary evidence of landlord, I find that the tenant is deemed to have received the notice to end tenancy, on November 26, 2016 and did not make application, pursuant to Section 49 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective by 1:00 pm on February 28, 2017. The Order may be filed in the Supreme Court for enforcement.

Since the effective date of the notice to end tenancy has not passed, the landlord's application is premature and therefore she must bear the cost of filing this application.

Conclusion

I grant the landlord an order of possession effective by **1:00 pm on February 28, 2017.**

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: January 13, 2017

Residential Tenancy Branch