



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL, FF

Introduction

On April 3, 2017, the Landlord submitted an Application for Dispute Resolution requesting an order of possession based on issuance of a 2 Month Notice to End Tenancy for Landlord Use of Property ("the Two Month Notice").

The matter was set for a conference call hearing. Both parties appeared at the hearing. The Tenant appeared nine minutes late and was provided a summary of the Landlord's testimony up to that point.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord testified that the tenancy began on July 31, 2015, as a month to month tenancy. Rent in the amount of \$550.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$250.00.

The Landlord issued the Tenant a 2 Month Notice dated February 1, 2017. The reason for ending the tenancy in the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The effective date shown on the 2 Month Notice is April 1, 2017.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

The Landlord testified that on February 1, 2017, the Tenant called the Landlords to discuss the 2 Month Notice.

The Landlord testified that the Tenant has failed to move out of the rental unit.

The Tenant testified that he received the 2 Month Notice on February 1, 2017. The Tenant did not dispute the 2 Month Notice by making an application for dispute resolution.

The Tenant submitted that he has not moved out because he is unable to find another rental unit.

As the effective date of the Notice has passed, the Landlord seeks an immediate order of possession. The Landlord testified that the Tenant has not paid rent for May 2017.

Analysis

Section 53 of the Act states: if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed to be the earliest effective date that complies with the section.

Pursuant to section 49 (6) of the Act, if a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

Under section 55 (2)(b) of the Act, if the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant received the 2 Month Notice on February 1, 2017, and did not dispute the Notice within 15 days. Pursuant to section 49 (6) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenancy has ended.

The effective date of the 2 Month Notice automatically corrects pursuant to section 53 of the Act to be April 30, 2017.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant authority to the Landlord to withhold \$100.00 from the Tenant's security deposit for the application fee.

Conclusion

The Landlord's request for an order of possession based on the issuance of a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 1, 2017, is granted.

The Tenant received the 2 Month Notice and did not dispute the Notice or move out on the effective date of the Notice.

I grant the Landlord an order of possession effective two (2) days after service on the Tenant. The Tenant must be served with the order of possession.

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: May 05, 2017

Residential Tenancy Branch