



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC OPL

Introduction:

Both parties made Applications and attended the hearing and gave sworn testimony. I find that a Two Month Notice to End a Residential Tenancy dated January 1, 2017 to be effective March 15, 2017 was served personally. The tenant did not vacate so the landlord in error issued a One Month Notice to End Tenancy dated March 30, 2017. The tenant filed her Application to dispute the One Month Notice on April 10, 2017 but she had not filed an Application to dispute the Two Month Notice. The landlord's Application for Dispute Resolution dated April 10 was also served personally. The landlord applies for an Order of Possession pursuant to sections 47 or 49 of the *Residential Tenancy Act* (the Act) and to recover the filing fee.

The tenant applies to cancel a Notice to End the Tenancy for cause pursuant to section 47 of the Act.

Issues:

Is the landlord entitled to an Order of Possession or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. Since the Two Month Notice to End Tenancy for landlord's use of the property was the first Notice served, I chose to hear evidence on that Notice. The tenant had not disputed that Notice but she was given opportunity to discuss it in the hearing and make submissions.

It is undisputed that the tenancy began on March 15, 2016, the rent is \$1100 a month payable on the 15th and the tenant paid a security deposit of \$550. The landlord served the Two Month Notice to End Tenancy pursuant to section 49 to take the property for occupancy by the landlord, his spouse or close family member. He said he is the only son and has an obligation to look after his mother. She will reside in the tenant's unit.

The tenant said that she had been told that his son would live in it. The landlord explained that his son currently lives in a unit in his house and at first, his son was going to move downstairs and allow his grandmother to live in his unit. However due to her age, it was decided that the lower suite would be more suitable for her.

It is undisputed that the tenant had a free month's rent from March 15th to April 14th. Then she decided to stay longer as she was having difficulty finding a place so she paid rent on April 15th and May 15th. The landlord requests an Order of Possession effective June 14th, 2017. He will waive the filing fee. The tenant tried unsuccessfully to negotiate an extension of time but the landlord said he needs the unit for his mother and the tenant has already over held the unit since March 15, 2017.

Analysis:

The Two Month Notice to End Tenancy is based on landlord's use of the property pursuant to section 49 of the Act. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes it. I find the tenant did not dispute the two month Notice. She would have had to apply in January 2017 to dispute that Notice. Although the tenant raised some questions in the hearing, I find the landlord's testimony credible that he requires the tenant's suite for the use of a close family member. I therefore issue him an Order of Possession effective June 14, 2017. He waived the filing fee.

I chose not to hear the Application based on the Notice to End Tenancy for cause as the landlord was successful in obtaining an Order of Possession based on the first Notice he issued. Therefore, I find the tenant's Application to cancel the Notice to End Tenancy for cause is not relevant. As explained to her in the hearing, each Notice, if successful, would have resulted in an Order of Possession. Since the landlord was successful on the first Notice he issued, it is unnecessary and irrelevant to hear a dispute on the Notice to End Tenancy for cause. I therefore dismiss her application to cancel the Notice to End the Tenancy for cause.

Conclusion:

I dismiss the tenant's application. I grant the landlord an Order for Possession effective June 14, 2017. The filing fee was waived so is not awarded.

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 18, 2017

Residential Tenancy Branch