



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

On May 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. The Landlord appeared at the hearing; however, the Tenants did not.

The Landlord provided affirmed testimony that the Tenants were served with the notice of Hearing using Canada Post Registered Mail on May 5, 2017. The Landlord provided the registered mail tracking numbers as proof of service. I find that the Tenants were duly served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

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 in September 2013 and is a month to month tenancy.

The Landlord issued the Tenant a 2 Month Notice dated February 28, 2017. The Landlord testified that the 2 Month Notice was served to the Tenants in person on March 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 May 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 the Tenants did not dispute the 2 Month Notice.

The Landlord testified that he is concerned that the Tenants may not have moved out of the rental unit.

As the effective date of the 2 Month Notice has passed and the Landlord seeks an order of possession.

The Landlord is seeking to recover the cost of the application for dispute resolution.

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

The effective date of the 2 Month Notice automatically corrects pursuant to section 53 of the Act to be May 31, 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 Tenants. 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. Since there is no evidence before me that the Tenants remained in the rental unit beyond the effective date of the 2 Month Notice, I decline to order the Tenants to repay the \$100.00 filing fee.

Conclusion

The Tenants received the 2 Month Notice and did not dispute the Notice.

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 28, 2017, is granted.

I grant the Landlord an order of possession effective two (2) days after service on the Tenants. If the Tenants are still living in the unit, the Tenants 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: June 09, 2017

Residential Tenancy Branch