



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, O

Introduction

This hearing dealt with a landlord's application for an Order of Possession. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, and print out from the Canada Post website as evidence the hearing documents were sent to the tenant via registered mail on May 10, 2017 and received by the tenant on May 20, 2017. I was satisfied the tenant was duly served with notification of this hearing and I continued to hear from the landlord without the tenant present.

The landlord requested the application be amended to withdraw her request for loss of rent for June 2017 since the tenant has since paid for use and occupancy for June 2017. The landlord also withdrew her request to recover the filing fee from the tenant. Since these requests are to the benefit of the tenant I amended the application accordingly.

In the details of dispute the landlord stated that an Order of Possession was being sought because the fixed term tenancy agreement was set to expire May 31, 2017 and the tenancy agreement provides that the tenant is to vacate the rental unit at the end of the fixed term. The landlord had erroneously indicated the dispute code that pertains to ending a tenancy for cause. I amended the application to correctly identify the dispute code that applies to the remedy sought by the landlord.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession due to the end of the fixed term tenancy?

Background and Evidence

The landlord testified that the tenant has occupied the rental unit for approximately seven years. On June 25, 2016 the parties executed a tenancy agreement for a 10

month fixed term tenancy set to commence on August 1, 2016 and expire on May 31, 2017. The tenancy agreement provides that at the end of the fixed term the tenancy ends and the tenant must move out of the residential unit. The parties initialled in the space beside this term. The monthly rent was set at \$1,750.00 payable on the first day of every month and the landlord is holding a security deposit of \$850.00.

On January 27, 2017 the landlord sent a letter to the tenant via registered mail to advise the tenant that the landlords intend to sell the rental unit after the end of the fixed term and the tenant would have to move at the expiration of the lease, which the landlord erroneously quoted as being June 30, 2017.

On April 20, 2017 the landlord sent another letter to the tenant informing the tenant that the rental unit had been sold, with a possession date of July 10, 2017, and reminding the tenant that the tenancy expires June 30, 2017 and the tenant would have to move out of the rental unit by June 30, 2017.

The landlord stated that she subsequently realized she erred in quoting June 30, 2017 as being the expiry date of the tenancy agreement but she was willing to give the tenant the benefit of her error by permitting the tenant to continue occupying the rental unit through June 2017. The landlord also testified that the tenant presented rent for June 2017 which the landlord accepted for "use and occupancy only". The landlord seeks an Order of Possession for June 30, 2017.

Analysis

Section 55(2) of the Act provides for the circumstances when a landlord may request an Order of Possession. Below, I have reproduced section 55(2) with my emphasis underlined:

(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:

(a) a notice to end the tenancy has been given by the tenant;

(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;

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

Upon review of the tenancy agreement, I find the tenancy was for a fixed term set to expire on May 31, 2017 and the tenancy agreement provides that the tenant would vacate the rental unit upon expiry of the fixed term. Accordingly, I find the landlord is entitled to an Order of Possession pursuant to section 55(2)(c) of the Act and I provide an Order of Possession to the landlord with this decision.

As for the effective date of the Order of Possession, the landlord has indicated she is agreeable to permitting the tenant occupancy of the unit until June 30, 2017 due to the error in her communication to the tenant and because the tenant paid for use and occupancy of the rental unit for June 2017. Therefore, I provide the landlord with an Order of Possession effective at 1:00 p.m. on June 30, 2017.

Conclusion

The landlord is provided an Order of Possession that shall be effective at 1:00 p.m. on June 30, 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: June 14, 2017

Residential Tenancy Branch