



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR

Introduction

On May 26, 2017, the Landlord submitted an Application for Dispute Resolution requesting an order of possession be granted based on a written notice to end tenancy received from the Tenant. On June 9, 2017, the Landlord amended the Application to include a monetary order for unpaid rent.

The initial hearing on July 18, 2017, was adjourned to permit the Tenant an opportunity to seek an advocate and to locate evidence submitted by the Landlord. The hearing was rescheduled for a conference call hearing at 9:00 a.m. on this date. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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

Preliminary and Procedural Matters

The initial hearing on July 18, 2017, did not proceed and was adjourned and rescheduled to commence on this date.

The Landlord withdrew his request for a monetary order for unpaid rent. The Landlord testified that rent for the month of August 2017, was received from the Tenant on a use and occupancy only basis.

The Landlords request for a monetary order for unpaid rent is dismissed.

Issue to be Decided

- Is the Landlord entitled to an order of possession based on the Tenants Notice to end tenancy?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in March 2010, as a month to month tenancy. Both parties agree that the current rent is \$565.00 per month and that the Tenant paid the Landlord a security deposit of \$270.00 at the start of the tenancy. The Landlord provided a copy of the tenancy agreement.

The Landlord is seeking an order of possession for the rental unit.

The Landlord, Mr. G.W., testified that on April 1, 2017, the Tenant delivered a written Notice to end tenancy to the Landlord. The Landlord testified that the notice to end tenancy provides an effective date of April 30, 2017. The Landlord provided a copy of the written Notice to end tenancy.

The Landlord submitted that because the notice to end tenancy was given after the end of the March, the effective date of the Notice changes to be the end of May 2017.

The Landlord submitted that the Tenant attempted to rescind the notice to end tenancy but the Landlord did not agree. The Landlord submitted that they have a new tenant waiting to move into the rental unit.

The parties exchanged correspondence and the Landlord offered to extend the tenancy until the end of June 2017. When the Tenant stated she will not move out, the Landlord applied for dispute resolution.

The Tenant acknowledged that she wrote the Notice to end tenancy dated April 1, 2017, and delivered it to the Landlord. The Tenant testified that after circumstances at the rental property improved, she attempted to rescind her Notice on April 25, 2017, but the Landlord refused to agree.

The Tenant submitted that the Notice to end tenancy should be considered null and void because it lacks her signature. The Tenant submitted that she was under duress when she served the Notice to end tenancy, and she also submitted that she was not able to find a rental unit.

The Landlord submitted that common law sets out that an actual signature is not required and that the Tenant has provided her full name on the Notice.

The Landlord also points out that the The Residential Tenancy Branch Policy Guideline #11 Amendment and Withdrawal of Notices provides that a Tenant cannot unilaterally withdraw a Notice to end tenancy.

The Landlord submitted that if he is successful with his application for an order of possession, he is agreeable to let the Tenant stay until the end of August 2017. The Landlord submitted that further delays in possessing the rental unit is prejudicial to the new-tenant who is waiting to move in.

Analysis

Section 44 of the Act states that a tenancy ends if a Tenant gives notice to end the tenancy not earlier than one month after the date the Landlord receives the Notice.

Section 53 of the Act states that a Notice to end a tenancy with an effective date that does not comply with section 44 is deemed to change to be the earliest date that complies with the section.

Section 52 of the Act states in order to be effective, a notice to end tenancy must be in writing; provide the effective date; and must be signed and dated by the Tenant.

Section 55(2) of the Act states that a Landlord may request an order of possession for a rental unit when a Notice to end the tenancy has been given by the Tenant.

The Residential Tenancy Branch Policy Guideline #11 Amendment and Withdrawal of Notices states that a Landlord or Tenant cannot unilaterally withdraw a notice to end tenancy. Only with the consent of the party to whom a notice is given, can a notice to end tenancy be withdrawn or abandoned.

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

The Tenant delivered a Notice to End the Tenancy to the Landlord on April 1, 2017. The effective date of the Notice is incorrect because the Notice to end tenancy was not served in accordance with the time frame required under section 44 of the Act Pursuant to section 53 of the Act, the effective date of the Tenant's Notice automatically corrects to be May 31, 2017.

I have reviewed the Tenant's notice to end tenancy. I find that the Tenant's Notice to end tenancy is an effective Notice. The Tenant's Notice contains the Tenant's full name and address. I find that the Tenant intended to end the tenancy and she considered the

Notice to be an effective notice. It was not until after circumstances improved at the rental property and after she experienced difficulty in finding other accommodation that she attempted to rescind the Notice to end tenancy.

I do not accept the Tenant's submission that the Notice to end tenancy was written or delivered under duress. There is insufficient evidence from the Tenant to support that the Notice should be set aside due to duress.

I find that the Landlord is not obligated to allow the Tenant to rescind the Notice to end tenancy. The Landlord considered the Notice to be effective and has found a new Tenant.

I find that the tenancy must end. Since the effective date of the tenancy has passed, the Landlord is entitled to an order of possession effective two days after service on the Tenant. The Landlord has accepted rent for the month of August 2017, and has agreed to permit the Tenant to remain in the unit until August 31, 2017. Therefore, I grant the Landlord an order of possession effective at 1:00 pm on August 31, 2017. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant served a valid notice to end tenancy to the Landlord on April 1, 2017. The Tenant cannot unilaterally rescind the Notice to end tenancy.

The Landlord is granted an order of possession effective August 31, 2017, after service on the Tenant.

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: August 14, 2017

Residential Tenancy Branch