



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The Two Month Notice to End Tenancy for landlord's use of the property is dated August 14, 2017 to be effective October 31, 2017 and the tenant confirmed it was served personally and the Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and they are entitled to an Order of Possession? Is the landlord entitled to recover the filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced April 22, 2014 on a fixed term to April 30, 2015 and reverted to a month to month tenancy, rent is \$1500 a month and a security deposit of \$750 was paid. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

- a) The landlord requires the property for their own use for occupancy by the landlord or the landlord's spouse or close family member (father, mother or child) of the landlord or the landlord's spouse.

The landlord said she requires the unit for her own occupancy due to her circumstances. The tenant did not file an Application to Dispute the notice and said he was planning to move out on October 31, 2017. However, he said he does not believe the landlord requires the unit for her own occupancy as she has other units in the building.

The landlord faxed in some evidence which was late due to the transition in procedures in the Residential Tenancy Branch. Included with the evidence is the tenancy agreement, the two month Notice to End Tenancy, proof of service, some emails and submissions from counsel.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the tenant did not file an Application to Dispute the Notice to End Tenancy within 15 days after receipt as required by section 49 of the Act. In these circumstances, section 49 (8) (9) provide the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate by that date. I find the Notice to End Tenancy clearly advises of this. Therefore, I find the tenancy is ended on October 31, 2017 and the landlord is entitled to an Order of Possession effective October 31, 2017.

The tenant said he intended to obey the Notice so did not dispute it. Since the landlord filed her Application before the effective date of the Notice, I find her not entitled to recover her filing fee. Although counsel said the tenant had made some indication that he would not comply with the move out date, I find insufficient evidence that he was not going to vacate in accordance with the Notice.

I pointed out to the tenant in the hearing that if the landlord does not occupy the unit as stated, the tenant has remedies pursuant to sections 51 of the Act in addition to his entitlement of one month's free rent which the landlord must allow him or refund it.

Conclusion:

I find the landlord entitled to an Order of Possession effective October 31, 2017 but not to recover the filing fee as the application was premature.

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: October 18, 2017

Residential Tenancy Branch