



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE WOLSTENCROFT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPL FF

Introduction:

Only the landlord attended this hearing and gave sworn testimony. The tenant did not attend this hearing, although I left the teleconference hearing connection open for 20 minutes in order to enable the tenant to call into this teleconference hearing scheduled for May 17, 2018 at 9 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The Two Month Notice to End Tenancy for landlord's use of the property is dated January 21, 2018 to be effective March 31, 2018 and the landlord said it was served by posting it on the door. He knows the tenant received it on January 31, 2018 because he telephoned him and there was a witness present. He said the Application for Dispute Resolution was served by registered mail and not returned. 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 in order to convert it for use by a caretaker pursuant to sections 49 and 55;
- b) For a monetary order to compensate them for loss due to the tenant's failure to move in response to the Notice.
- c) 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? Have they proved they are entitled to compensation as claimed? Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord explained that the company had just taken over management of this unit on January 1, 2017 but the tenant has been in residence for about 8 years. There is no tenancy agreement and rent is \$600 a month which is paid directly to the owner. He does not know if there was a security deposit. He said the owner had lived upstairs and moved to another municipality. He needs a caretaker to handle the properties now and has found a licensed contractor to do this. The caretaker will reside in the basement suite which is now occupied by the tenant. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

- a) The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

He said they have tried to work with the tenant but he refused to vacate in response to the Notice. He received free rent for March in accordance with section 49 of the Act. They had to find short term alternate accommodation for the caretaker who had vacated his own unit to take this job. The tenant's refusal to obey the Notice to End Tenancy has caused losses to the landlord. They claim as follows:

\$1500 for one month's rent at alternate accommodation for the caretaker; it is a 2 bedroom unit and the subject basement unit has only one bedroom. The vacancy rate is low so they had to take this unit.

\$750 security deposit

\$750 moving estimate. No receipt as the caretaker rented a truck for about 2 days and had friends to help him move.

In evidence is the lease signed with the caretaker starting on April 1, 2018, the Notice to End Tenancy and a statement of the sequence of events from the landlord. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

Section 49(6) (e) of the Act provides a landlord may end a tenancy if they intend to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. The onus of proof is on the landlord, on a balance of probabilities, to prove this intention. I find the evidence of the landlord credible that the owner has moved and he requires a caretaker to handle his properties. His credibility is supported by the new residential tenancy agreement signed by the caretaker to occupy alternate accommodation until the unit is vacated. The tenant has not disputed the Notice. In

these circumstances section 55 of the Act provides a landlord is entitled to an Order of Possession.

Regarding the monetary claim by the landlord, I find awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the tenant violated the Act by not vacating according to the Notice to End Tenancy and not disputing it. I find this violation caused losses to the landlord as he had to pay for alternate accommodation. However, I find the caretaker would be paying about \$750 for the subject basement suite plus his other duties. Therefore, I find the landlord entitled to the additional cost of \$750 for the alternate accommodation (\$1500-\$750)

Regarding his claim for the security deposit paid for the alternate unit, I find section 38 of the Act provides a landlord must return this or make a claim against it. As it will likely be returned when the caretaker moves out, I find the landlord not entitled to this amount. I find the moving expense claim also not supported by the evidence. I find the landlord not entitled to this amount.

Conclusion:

I find the landlord entitled to an Order of Possession effective two days from service and to a monetary order for their losses plus filing fee. I find them entitled to \$850 total.

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 17, 2018

Residential Tenancy Branch