



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession based on a *2 Month Notice to End Tenancy for Landlord's Use of Property* and a tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property*. One of the named landlords appeared at the hearing; however, there was no appearance on part of the tenants.

The landlord provided two registered mail tracking numbers as proof that a hearing package was sent to each tenant on February 23, 2018. A search of the tracking numbers showed that the male tenant received the registered mail on February 28, 2018 and the female tenant received the registered mail on March 8, 2018. I was satisfied that each of the named tenants was duly served with notification of this proceeding and I continued to hear from the landlord without the tenants present.

Since the tenants did not appear at the hearing, I dismiss their Application for Dispute Resolution.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that there is no written tenancy agreement with the tenants; however, Income Assistance sends rent cheques to his co-landlord. The monthly rent is \$600.00; however, the tenants have only been paying \$300.00 or \$350.00 for the past several months.

On August 24, 2017 the landlord issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the 2 Month Notice) and mailed it to the tenants. The landlord provided a receipt and a tracking number that showed the 2 Month Notice was delivered on August 30, 2017. The tenants did not file to dispute the 2 Month Notice. The 2 Month Notice has an effective date of October 31, 2017; however, the tenants have yet to return vacant possession of the rental unit to the landlords.

The landlord appearing before me was uncertain as to whether the rent cheques received for the past couple of months have been cashed but if they have, the landlords will refund the tenants the equivalent of one month's rent as compensation for receiving the 2 Month Notice.

As documentary evidence, I was provided a copy of the 2 Month Notice, the mailing receipt and a print-out from Canada Post to show the date the 2 Month Notice was delivered. I was also provided a copy of a quote from a contractor showing the work the landlords intend to complete in the rental unit once vacant possession is obtained.

I note that in filing their Application for Dispute Resolution, the tenants also acknowledged receiving the 2 Month Notice and uploaded a copy of it. It is the same and the copy provided to me by the landlords.

Analysis

Pursuant to section 49(5) of the Act, a tenant in receipt of a *2 Month Notice to End Tenancy for Landlord's Use of Property* has 15 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not dispute the Notice then the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice.

I was provided a copy of a 2 Month Notice that is in the approved form and duly completed. I accept the evidence before me that it was received by the tenants on August 30, 2017. The time to dispute the 2 Month Notice has long since passed and I find the tenancy ended on October 31, 2017.

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(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;

Since the tenants filed to dispute the 2 Month Notice, albeit well after the time limit for doing so passed, the tenant's Application for Dispute Resolution has been dismissed due to failure to appear at the hearing. Accordingly, the landlords are entitled to an Order of Possession pursuant to section 55(1) of the Act.

The landlords are also entitled to an Order of Possession pursuant to section 55(2) of the Act since the tenants did not dispute the 2 Month Notice within the time limit for doing so and the time limit for doing so was well after the effective date of the 2 Month Notice.

Since the tenants have not yet returned vacant possession of the rental unit to the landlords I provide the landlords an Order of Possession effective two (2) days after service upon the tenants.

Tenants in receipt of a 2 Month Notice are entitled to compensation equivalent to one month's rent. If the tenant(s) have paid the rent for the last month, the landlords must refund the rent to the tenant(s)

Conclusion

The tenant's Application for Dispute Resolution has been dismissed. The landlords request for an Order of Possession has been granted. I have provided the landlords with an Order of Possession effective two (2) days after service upon the tenants.

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 02, 2018

Residential Tenancy Branch