



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PODOLLAN CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property at 9:30 a.m. on this date, via teleconference call. The landlord's agent appeared at the hearing; however, there was no appearances on part of the tenants despite leaving the teleconference call open until 9:40 a.m.

The landlord's agent confirmed that the landlord was served with the tenant's application. Since the tenants did not appear at the hearing, I dismissed their application.

The landlord's agent stated that the tenants are still occupying the rental unit; however, she understands that they intend to vacate the rental unit this coming weekend. The landlord requested an Order of Possession in the event the tenants do not vacate.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that the tenants were served with the subject 2 Month Notice to End Tenancy for Landlord's Use of Property by posting on the door of the rental unit on May 1, 2018. The 2 Month Notice has a stated effective date of July 1, 2018. The landlord stated the tenants' monthly rent payment is due on the first day of every month and the tenants did not pay rent for June 2018 rent as compensation for receiving the 2 Month Notice.

Analysis

Section 55(1) of the Act provides that I must provide the landlord with an Order of Possession in certain circumstances. Section 55(1) provides as follows:

Order of possession for the landlord

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.

Since the tenants did not appear at the hearing, I dismissed their application to cancel the subject 2 Month Notice. I have reviewed the subject 2 Month Notice and it as in the form approved at the time it was served and it was duly completed. As such, I am satisfied that it complied with the form and content requirements of section 52 of the Act.

I do note; however, that the effective date is incorrect based on the date the 2 Month Notice was served and the date that rent is payable. Pursuant to section 49(2), tenants in receipt of a 2 Month Notice are entitled to two full months of notice and the effective date should read the day before rent is due. In counting months, the month the notice is received is not counted. Accordingly, two full months of notice and an effective date that is the day before rent is due would be July 31, 2018 in this case.

Where an effective date is incorrect, section 53 provides that the effective date automatically changes to comply. Accordingly, the effective date on the 2 Month Notice reads July 31, 2018 and I provide the landlord with an Order of Possession with an effective date of July 31, 2018 to serve and enforce upon the tenants.

Conclusion

The tenants' application is dismissed. The landlord is provided an Order of Possession with an effective date of July 31, 2018.

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 28, 2018

Residential Tenancy Branch