



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the *Act*) for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for the recovery of the filing fee paid for this application.

The Landlord and an agent (the “Landlord”) were present for the duration of the hearing. One of the Tenants and two agents (the “Tenant”) were also present for the teleconference hearing. All parties were affirmed to be truthful in their testimony.

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package along with a copy of the Landlord’s evidence, which was served in person. The Tenants did not submit any evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

Is the Landlord entitled to an Order of Possession based on a One Month Notice to End Tenancy?

Background and Evidence

The Landlord submitted the tenancy agreement as documentary evidence. The tenancy began on July 1, 2017 for a one-year fixed term tenancy set to end June 30, 2018.

As this application was based on a One Month Notice to End Tenancy for Cause, and a One Month Notice was not submitted in evidence, the Landlord was asked to clarify. The Landlord testified that notice to end the tenancy was provided to the Tenants in a letter dated January 12, 2018.

The letter, which was submitted in evidence, warns the Tenants that if they continue smoking in the rental unit, a One Month Notice will be issued to end the tenancy. The Landlord also referenced a letter dated April 3, 2018 in which the Tenants were notified that their fixed term tenancy would be extended until July 31, 2018.

When asked, the Landlord confirmed that they wanted an Order of Possession for July 31, 2018 to ensure that they will have possession of the rental unit as of that date.

The Tenant confirmed in testimony that the tenancy has not ended yet and that a One Month Notice was not served to them. The Tenant testified that they received the letters notifying them that the tenancy will end July 31, 2018, but that they would like more time to find a new place to live.

Analysis

During the hearing, it became clear that there was a disagreement between the parties regarding the end of the tenancy. As this was not the matter before me, I will not consider evidence regarding when the tenancy will end in accordance with the *Act*.

However, I note that, pursuant to Section 44(3) of the *Act*, a fixed term tenancy continues on a month-to-month basis if a new agreement is not signed after the fixed term ends. I recommend that if either party has questions about ending the tenancy, that they refer to the *Residential Tenancy Act* and call the Residential Tenancy Branch for information.

Section 52(e) of the *Act* states that a notice to end tenancy from the landlord must be given in the approved form. As both parties confirmed that a One Month Notice was not served to the Tenants, and instead that a warning letter was provided, I find that notice to end the tenancy was not provided in the approved form.

Section 55(2)(b) of the *Act* states that a landlord may request an order of possession if they have served the tenants with a notice to end the tenancy, the tenants have not disputed the notice and the time for disputing the notice has expired. As I have determined that no notice to end the tenancy was provided to the Tenants, I am unable to consider issuing an Order of Possession to the Landlord. Therefore, this application is dismissed without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

As the Landlord's application is dismissed, I decline to award the recovery of the filing fee paid for the application.

Conclusion

The application is dismissed without leave to reapply. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

The cost of the filing fee will not be returned to the Landlord.

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 18, 2018

Residential Tenancy Branch