



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL, CNR, OLC, ERP, MNDC

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On June 11, 2018, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 6, 2018. The Tenant also applied for compensation for damage or loss and for the Landlord to make repairs to the rental unit.

On June 19, the Landlord applied for an order of possession for the rental unit based on the issuance of a 2 Month Notice To End Tenancy For Landlord’s Use Of Property dated March 17, 2018.

The matter was set for a conference call hearing. The Landlord attended the hearing; however, the Tenant did not. The Landlord provided affirmed testimony that she served the Tenant with the Notice of Hearing documents in person a couple days after she applied for dispute resolution. Based on the Landlord’s testimony, I find that the Tenant was served with the Notice of Dispute Resolution Proceeding and failed to attend 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.

Preliminary and Procedural Matters

The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 6, 2018, and failed to attend the hearing. The line remained open while the phone system was monitored for twelve minutes and the Tenant did not call

into the hearing during this time. Therefore, as the Applicant did not attend the hearing by 11:12 am, I dismiss the Tenant's application with leave to reapply. This is not an extension of any statutory deadline.

The hearing proceeded on the Landlord's application.

Issues to be Decided

- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord testified that the tenancy began a couple of years ago. Rent in the amount of 900.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00.

The Landlord testified that she issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 17, 2018. The Landlord provided a copy of the 2 Month Notice. The reason for ending the tenancy in the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Landlord testified that she served the 2 Month Notice to the Tenant using registered mail on March 17, 2018. The effective date shown on the 2 Month Notice is June 1, 2018.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

The Landlord testified that the Tenant did not dispute the 2 Month Notice and has failed to move out of the rental unit.

The Landlord is requesting an order of possession for the rental unit.

Analysis

Pursuant to section 49 (6) of the Act, if a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the Notice.

Under section 55 (2)(b) of the Act, if the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

Based on the above, the affirmed testimony of the Landlord, and on a balance of probabilities, I find as follows:

I find that the Tenant received the 2 Month Notice on the fifth day after it was sent using registered mail. The Tenant is deemed to have received the 2 Month Notice on March 22, 2018. The Tenant did not dispute the Notice. Pursuant to section 49 (6) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenancy has ended.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant authority to the Landlord to withhold \$100.00 from the Tenant's security deposit for the application fee.

Conclusion

The Tenant received the 2 Month Notice and did not dispute the Notice or move out on the effective date of the Notice.

The Landlord's request for an order of possession based on the issuance of a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 17, 2018, is granted.

I grant the Landlord an order of possession effective two (2) days after service on the Tenant. The Tenant must be served with the order of possession.

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: July 12, 2018

Residential Tenancy Branch