



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On August 16, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

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.

Issues to be Decided

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on November 1, 2016, on a month to month basis. Rent in the amount of \$1,000.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$500.00.

The Tenant testified that he received the Landlords 2 Month Notice To End Tenancy For Landlord's Use Of Property in person on July 30, 2018. The effective date of the Notice (the date the Tenant must move out of the rental unit) is October 1, 2018.

The reason for ending the tenancy within the 2 Month Notice is as follows:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord in writing, to give this Notice because the purchaser or a close family member intends to in good faith to occupy the rental unit.

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 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 date set out on page 1 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.

On August 16, 2018, the Tenants applied to dispute the 2 Month Notice. The Tenants' application is filed late as it was filed outside of the 15 day dispute period and does not contain a request for more time to make the application.

The Tenants did not provide any explanation of exceptional circumstances on why the application was filed late.

The Tenants submitted that the 2 Month Notice they received from the Landlord is deficient because some areas were left blank.

The Tenant, Mr. D.H. testified that the reason he disputed the 2 Month Notice was not because he doubts that the purchaser will be occupying the unit; the Tenant submitted that he is simply looking for an extension of time to find a new place to live. The Tenant also submitted that he rents storage space from the Landlord and that this makes it a commercial tenancy situation. The Tenant did not provide any documentary evidence of a commercial agreement.

The Landlord disagreed that the storage arrangement is a commercial tenancy.

The Landlord is seeking an order of possession for the rental property.

Analysis

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

On August 16, 2018, the Tenants submitted a copy of the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 30, 2018, that they received from the Landlord. I find that the 2 Month Notice is completed correctly and I find no omissions or deficiencies on the Notice. The Tenants' suggestion that the 2 Month Notice is deficient is dismissed.

I find that the Tenants' application to Dispute the 2 Month Notice is late. Furthermore, the Tenants were not using the dispute process for a legitimate purpose. The Tenants were simply looking for additional time to move out.

I find that pursuant to section 49 (9) of the Act, the Tenant did not make an application within 15 days and the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The Tenants' application to dispute the 2 Month Notice is dismissed.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlords are entitled to an order of possession effective two (2) days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

There is insufficient evidence from the Tenant to establish there is a commercial tenancy agreement for storage. While there may have been a separate agreement for storage, I find that the matter before me is predominantly for a residential tenancy under the Act.

Conclusion

The Tenants' Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 30, 2018, is late and is dismissed.

I grant the Landlords an order of possession effective two (2) days after service on the Tenants. The Tenants 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: October 04, 2018

Residential Tenancy Branch