



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL-S

Introduction

On October 1, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking monetary compensation for unpaid rent pursuant to Section 67 of the *Act*.

The Landlord attended the hearing with B.K. as her agent. The Tenant attended the hearing with M.B. as his advocate. All in attendance provided a solemn affirmation.

The Landlord advised that she served the Tenant the Notice of Hearing package by hand on October 1, 2018 and the Tenant confirmed that he received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord's Notice of Hearing package.

The Landlord stated that she served the Tenant her evidence by registered mail on November 8, 2018; however, the Tenant stated that he did not receive this package and speculated that the Canada Post strike may have impacted delivery. Regardless, service of the Landlord's evidence would have been considered late and not in accordance with Rule 3.14 of the Rules of Procedure. As such, this evidence was not considered when rendering this decision; however, the Landlord was permitted to speak to this evidence during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord submitted a tenancy agreement into evidence indicating that the tenancy started on April 1, 2011. Rent was established at \$700.00 per month and was due on the first of each month. A security deposit of \$250.00 was paid.

The Tenant advised that he has a separate Dispute Resolution hearing for other issues pertaining to this tenancy; however, he stated that he signed a new tenancy agreement with the same Landlord for the same rental unit that began on September 1, 2018.

The Landlord submitted that the Notice was served to the Tenant on April 4, 2018 in person. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The effective date of the Notice was noted as May 31, 2018.

The Tenant acknowledged that he received the Notice on April 4, 2018 and that he did not dispute the Notice.

The Landlord stated that the Tenant did not pay May 2018 rent and that he paid \$700.00 for June 2018 rent. She advised that he could not vacate the rental unit, so he

offered to pay \$1,000.00 to stay in the rental unit. The Landlord felt bad for his situation, so she accepted \$1,000.00 for July 2018 and \$1,000.00 for August 2018.

The Tenant confirmed that he paid \$1,000 for July and August 2018 rent but he stated that the reason he paid this is because the Landlord threatened that he would have to leave if he did not pay that amount. In addition, the Tenant advised that prior to being served the Notice, the Landlord informed him that rent would be raised to \$1,000.00, but when he told her he could not afford that amount, she served the Notice instead.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. Furthermore, this Section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 53 of the *Act* requires that any incorrect effective date on a Notice will automatically self-correct to the appropriate date.

Section 55(1) of the *Act* states that if the Tenant has not submitted an Application for Dispute Resolution seeking to cancel the notice within the required timeframe and the Landlord's Notice complies with all the requirements of Section 52 of the *Act* and is upheld, the Landlord must be granted an Order of Possession.

The undisputed evidence before me is that the Tenant was served the Notice on April 4, 2018. As the fifteenth day fell on Thursday April 19, 2018, the Tenant must have made

his Application by that date at the latest. However, the undisputed evidence is that the Tenant did not dispute this Notice. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

When reviewing the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on April 4, 2018, I find that it complies with the requirements set out in Section 52. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the tenancy ended in accordance with the Notice.

However, the Landlord dated the effective date of the Notice as May 31, 2018. Pursuant to Section 49 of the *Act*, the Notice requires that the Tenant be entitled to two whole months' Notice. As the rent is due on the first of each month, this Notice was served late in order for it to be effective for May 31, 2018. As Section 53 allows for an incorrect effective date to automatically self-correct, I am satisfied that this tenancy effectively ended on June 30, 2018.

Furthermore, with respect to the Landlord's request for an Order of Possession, the consistent and undisputed evidence before me is that after the tenancy effectively ended on June 30, 2018, the Landlord collected rent in a new amount of \$1,000.00 for July and August 2018. In my view, after the tenancy ended on June 30, 2018, the Landlord engaged in a new, unwritten tenancy with the Tenant as of July 1, 2018. As such, an Order of Possession cannot be awarded to the Landlord as the prior tenancy had effectively ended and the Landlord established a new tenancy with the Tenant.

Moreover, the Landlord requested in her Application for rent owed for September and October 2018. However, as this Application pertained to the previous tenancy, I dismiss this claim as it is not relevant to this hearing.

As a note, during the hearing, the parties were also advised of the potential compensation requirements of the Notice with respect to whether or not the Landlord used the property for the stated purpose after the effective date of the Notice.

Conclusion

I dismiss the Landlord's Application without leave to reapply.

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: November 26, 2018

Residential Tenancy Branch