



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for landlord use of property pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord named in this application, and had authority to speak on his behalf.

The landlord testified that on January 8, 2019 the landlord's application for dispute resolution hearing package ("application") was forwarded to each tenant via registered mail. The landlord provided Canada Post receipts and tracking numbers as proof of service. Based on the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application on January 13, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord use of property?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on October 2, 2014 on a month-to-month basis. Rent in the amount of \$1,650.00 is payable on the last day of each month. The tenants remitted a security

and pet deposit in the total amount of \$1,790.00 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The landlord testified that on December 20, 2018 the tenants were served with the landlord's 2 Month Notice to End Tenancy for Landlord Use ("2 Month Notice"), dated December 6, 2018, by way of posting. The 2 Month Notice indicates an effective move-out date of February 18, 2019. The grounds to end the tenancy cited in that 2 Month Notice were;

- 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).

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord use of the property in which the landlord or close family member of the landlord intends in good faith to occupy the rental unit, the tenant may within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants did not file an application to dispute the notice the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must move out of the unit.

Subsection 49(2) of the *Act* permits a landlord to set an effective date to end the tenancy, at the earliest, the later of two months after the notice is received and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The landlord has set an effective date in the 2 Month Notice of February 18, 2019. This effective date is too early. Pursuant to section 53 of the *Act*, the effective date of the 2 Month Notice is corrected to February 28, 2019. Therefore I find the landlord is entitled to an order of possession effective February 28, 2019 at 1:00 p.m.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the \$1,790.00 security deposit in full satisfaction of the monetary award. The landlord is cautioned to follow the provisions of section 38 of the *Act* in regards to the remaining \$1,690.00 security deposit balance.

Conclusion

I grant an order of possession to the landlord effective **February 28, 2019 at 1:00 p.m.**

I order the landlord to retain \$100.00 of the security deposit and address the remaining security deposit balance in accordance with section 38 of the *Act*.

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: February 01, 2019

Residential Tenancy Branch