



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM-4M, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “Act”) to enforce a Two Month Notice to End Tenancy for Landlord’s Use of the Property, (the “Notice”) issued on April 27, 2018. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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

Issue to be Decided

- Are the Landlords entitled to an order of possession, pursuant to section 49 of the Act?
- Are the Landlords entitled to the recovery of their filing fee for this application?

Background and Evidence

The parties agreed that the tenancy began on November 1, 2012. Rent in the amount of \$1,500.00 is to be paid by the first day of each month, and the Landlord is holding a \$750.00 security deposit for this tenancy.

The Landlord testified that he served the Notice to end tenancy to the Tenant on June 28, 2018, by attaching it to the Tenant's door or other conspicuous place. The Notice indicated an end of tenancy date of November 1, 2018. The Tenant testified that he received the notice.

The Landlord testified that the Tenant had not served the Landlord with an application to show they had disputed the Notice.

The Tenant testified that he attended the Residential Tenancy Branch to dispute the Notice; however, he was not able to dispute the Notice as the Notice had not been issued in his name.

The Landlord testified that he had made a mistake on the spelling of the Tenant's name on the Notice. The Landlord testified that the misspelling was a simple error and the Tenant should still have moved out in accordance with his notice. The Landlord is seeking an order of possession.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities:

Section 49 of the *Act* states that a Landlord may end a tenancy, for the landlord use of the property; to demolish the rental unit, by issuing a notice to end tenancy effective on a date that is not earlier than four months after the tenant receives the notice.

Landlord's notice: landlord's use of property

49 (2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 4 months after the date the tenant receives the notice,

(ii) 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, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I take this section to imply that the Landlord must correctly name the tenant on such a notice.

I accept the agreed upon testimony of both parties that the Notice was issued to the Tenant and that the Notice listed the incorrect spelling of the Tenant's name. I also accept the Tenant's testimony that he was not able to dispute the Notice as it did not have his correct name on the document.

I find the Notice issued June 28, 2018, of no effect, and that the tenancy continues until it is ended in accordance with the *Act*.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have not been successful in their application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

I dismiss the Landlords' application, and I find the Notice issued June 28, 2018, of no effect under 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 1, 2019

Residential Tenancy Branch