



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, OPN

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 2, 2019 (the “Application”). The Landlord applied for an Order of Possession based on a Mutual Agreement to End a Tenancy and on the basis that the Tenant had given notice to end the tenancy.

The Landlord appeared at the hearing with the witness who was outside of the room until required. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord and witness provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence.

The Landlord had submitted two documents that were not accessible to me. One was a witness statement in relation to service of the hearing package and evidence and one was the Mutual Agreement to End a Tenancy. I allowed the Landlord to re-submit these two documents during the hearing given he had attempted to do so prior to the hearing but the files did not upload properly.

I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package and evidence were served on the Tenant in person at the rental unit on January 10, 2019. The Landlord had submitted a signed witness statement supporting this.

Based on the undisputed testimony of the Landlord and signed witness statement, I find the Tenant was served with the hearing package and evidence in accordance with

sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”). I also find these were served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and witness were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Landlord and witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on a mutual agreement?
2. Is the Landlord entitled to an Order of Possession on the basis that the Tenant gave notice to end the tenancy?

Background and Evidence

The Landlord testified that the witness originally acted as agent for the owner of the rental unit but that he took over as agent for the owner in September of 2018. The witness agreed with this.

The witness testified that the Tenant was not originally a tenant but a tradesperson allowed to stay at the rental unit. The witness testified that this changed over time and the Tenant and him had a verbal tenancy agreement in relation to the rental unit. The witness testified that the Tenant has lived at the rental unit since February of 2018 and that the tenancy is a month-to-month tenancy. The witness testified that rent is \$600.00 per month due on the first day of each month.

The Landlord testified that the Tenant agreed to vacate the rental unit. He said he brought the Mutual Agreement to End a Tenancy form and notice to end tenancy over to the Tenant to sign on October 18, 2018. The Landlord testified that the Tenant was amenable to signing the documents. He said the Tenant was video taped signing the documents. The Landlord testified that the Tenant agreed to vacate by December 31, 2018 but is now refusing to vacate.

The Landlord said the parties may have resolved the situation at this point; however, the Landlord continued to seek an Order of Possession. The Landlord sought an Order of

Possession effective at the end of February. The Landlord advised that the Tenant has not paid rent for a long time.

The witness testified that he was present when the Tenant signed the Mutual Agreement to End a Tenancy and notice to end tenancy and that he took the video of the Tenant signing these documents. The witness testified that the parties were amicable and there was a clear understanding about the tenancy ending.

I asked about the difference in the spelling of the Tenant's name on the Mutual Agreement to End a Tenancy, notice to end tenancy and the Application. The witness testified that the spelling on the Mutual Agreement to End a Tenancy and notice to end tenancy is the spelling the Tenant originally gave but that the witness has since learned the spelling is as on the Application.

The Landlord confirmed that both the witness and Landlord dealt with the Tenant in relation to this tenancy and that the Tenant is aware both act as agents for the owner.

The Landlord submitted the Mutual Agreement to End a Tenancy (the "Mutual Agreement"). It lists the witness as the landlord. It refers to the rental unit. It states that the Tenant will vacate by December 31, 2018. It is dated October 18, 2018 and signed by the Tenant.

The Landlord submitted a copy of the notice to end tenancy. It states that the Tenant will be terminating the rental agreement and vacating the rental unit as of December 31, 2018.

The Landlord submitted a video and photos of the Tenant signing the Mutual Agreement to End a Tenancy and notice to end tenancy.

Analysis

Section 44 of the *Act* sets out when a tenancy ends which includes when a tenant gives notice in accordance with section 45 of the *Act* and when the landlord and tenant agree in writing to end the tenancy.

Pursuant to section 55(2)(a) of the *Act*, a landlord can apply for an order of possession for a rental unit if the tenant has given notice to end the tenancy.

Further, pursuant to section 55(2)(d) of the *Act*, a landlord can apply for an order of possession for a rental unit if the landlord and tenant have agreed in writing that the tenancy is ended.

Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is 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.

Further, section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

...

Based on the undisputed testimony of the Landlord and witness, as well as the evidence submitted, I accept that the Tenant gave notice to end the tenancy December 31, 2018.

Based on the undisputed testimony of the Landlord and witness, as well as the evidence submitted, I find the notice to end the tenancy complies with section 45 and 52 of the *Act* and is an effective notice.

Based on the undisputed testimony of the Landlord and witness, as well as the evidence submitted, I accept that the Tenant also signed the Mutual Agreement. I find this includes all relevant information. It clearly states that the Tenant agrees to vacate

the rental unit on December 31, 2018. I do not see any issue with the form or content of the Mutual Agreement. The Tenant is bound by this agreement.

Pursuant to section 44(1)(a)(i) and 44(c) of the *Act*, the tenancy ended December 31, 2018 pursuant to the notice to end tenancy and Mutual Agreement. The Tenant was required to vacate the rental unit.

The Landlord is entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I grant the Landlord an Order of Possession effective at 1:00 p.m. on February 28, 2019.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2019. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 12, 2019

Residential Tenancy Branch