



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

On July 1, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession based on issuance of a Four Month Notice to End Tenancy for Landlord Use of Property (“the Four Month Notice”).

The matter was set for a conference call hearing. The Landlord and Tenants attended the conference call hearing.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

The parties confirmed that they have 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

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord testified that other Tenants living on the rental property invited friends to stay at the rental unit and after three months the Landlord subsequently entered into a tenancy agreement with them.

The Landlord and Tenants testified that the formal tenancy agreement began on March 6, 2019, for a fixed term ending on July 31, 2019. Rent in the amount of \$800.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$200.00. The Tenants were living in the rental unit sharing the kitchen and bathroom with the other Tenants.

The Landlord pointed out that the Tenants went into this tenancy fully aware that they would have to move out of the rental unit at the end of the fixed term tenancy.

The Landlord issued the Tenants a Four Month Notice dated March 30, 2019. The Notice provides the following reason for ending the tenancy:

Perform renovations or repairs that are so extensive that the rental unit must be vacant.

The Four Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 30 days of receiving it received by filing an Application for Dispute Resolution at the Residential Tenancy Branch online or in person. The effective date for the Tenant to move out of the rental unit is July 31, 2019, which is also the end date of the fixed term tenancy.

The Four Month Notice provides that if a Tenant does not file an Application within 30 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession for the rental unit.

The Landlord testified that the Four Month Notice was delivered in person to the Tenant Ms. T.G.. on March 30, 2019. The Landlord provided a proof of service document which indicates the Tenant signed for the Four Month Notice on March 30, 2019.

The Landlord testified that the Tenant has failed to move out of the rental unit on the effective date of the Four Month Notice.

The Tenant, Mr. B.M. provided testimony that he believes that he received the Four Month Notice on March 6, 2019.

The Tenants submitted that they did not dispute the Four Month Notice because they believe they had an understanding with the Landlord that they could stay living at the

rental property. The Tenant testified that they did not have anything in writing from the Landlord saying that they could stay.

As the effective date of the Notice has passed, the Landlord seeks an immediate order of possession for the rental property.

Analysis

Pursuant to section 49 (9) of the Act, if a Tenant who has received a notice under this section does not make an application for dispute resolution within 30 days, the Tenant is conclusively presumed to accept that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Under section 55 (2)(b) of the Act, a Landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the Landlord, the Tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. In accordance with section 55 (4) of the Act, in these circumstances the director may, without any further dispute resolution process grant an order of possession.

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

The Tenants received the Four Month Notice on or before March 30, 2019, and did not dispute the Notice within 30 days. I find that the time for making an application to dispute the notice has expired. Pursuant to section 49 (9) of the Act, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on July 31, 2019; the effective date of the Four Month Notice. The tenancy has ended.

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

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants did not move out of the rental unit on the effective date of the Notice, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant authority to the Landlord to withhold \$100.00 from the Tenant's security deposit for the cost of the application fee.

Conclusion

The Landlord's request for an order of possession based on the issuance of a Four Month Notice To End Tenancy For Landlord's Use Of Property dated March 30, 2019, is granted.

The Tenants received the Four Month Notice and did not dispute the Notice or move out on the effective date of the Notice. I find that the time for making an application to dispute the notice has expired.

I grant the Landlord 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: August 27, 2019

Residential Tenancy Branch