



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on January 17, 2020, (the "Application"). The Landlord applied for an order of possession for the landlord's use of the property, pursuant to the *Residential Tenancy Act* (the "Act").

The hearing was scheduled for 11:00 AM on March 20, 2020 as a teleconference hearing. The Landlord appeared at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant in person on January 20, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on January 20, 2020. The Tenant did not submit documentary evidence in response to the Application.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to 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(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a Two Month Notice for Landlord's Use of the Property (the "Two Month Notice") dated October 31, 2019, pursuant to Section 49 and 55 of the Act?

Background and Evidence

The Landlord testified that the tenancy began on October 15, 2005. Currently, the Tenant is required to pay rent in the amount of \$2,300.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 which the Landlord continues to hold. The Landlord stated that the Tenant continues to occupy the rental unit.

The Landlord testified they served the Tenant in person with the Two Month Notice on October 31, 2019, with an effective vacancy date of December 31, 2019. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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 Landlord stated that their daughter intends to occupy the rental unit as soon as the Landlord gains vacant possession of the rental unit. The Landlord stated that the Tenant has not complied with the Two Month Notice as the Tenant has been unable to find another residence. The Landlord confirmed that the Tenant has paid rent for the month of March 2020.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may 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. During the hearing, the Landlord stated that their daughter intends on moving into the rental unit once the Landlord gains vacant possession. As such, the Landlord is seeking an order of possession.

The Landlord stated that they served the Tenant in person with the Two Month Notice on October 31, 2019, with an effective vacancy date of December 31, 2019. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

According to subsection 49(9) of the Act, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

In this case, the Tenant is deemed to have received the Two Month Notice on October 31, 2019. Therefore, the Tenant had until November 15, 2019 to make an Application for dispute resolution or is conclusively presumed to have accepted the tenancy has ended on the effective date of the Two Month Notice.

As the Tenant did not apply to dispute the Two Month Notice in accordance with Section 49(8), I find that they are conclusively presumed to have accepted the end of the tenancy according to the effective date, December 31, 2019.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective at 1:00 PM on March 31, 2020 after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Landlord and the Tenant should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Conclusion

The Tenant has breached the Act by not complying with the Two Month Notice. The Landlord is granted an order of possession effective at 1:00 PM on March 31, 2020 after service on the Tenant. The order should be served to the Tenant as soon as possible and 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 *Residential Tenancy Act*.

Dated: March 20, 2020

Residential Tenancy Branch