



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for an order of possession.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by email, on April 3, 2020, at 9:14 am, in accordance with the Director's Order, allowing this method of service during the state of emergency. Filed in evidence are copies of the email, showing the documents were sent.

In this case a Director's Order was signed on March 30, 2020, permitting email as an approved method of service, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended.

I find the landlord was deemed to have been served three days later. I find that the landlord has been duly served in accordance with the Act.

Issues to be Decided

Are the tenants entitled to an order of possession?

Background and Evidence

The tenant testified that they entered into a verbal tenancy agreement with the landlord on February 11, 2020, at which time the security deposit was paid. The tenant stated the tenancy was to start on April 1, 2020.

The tenant testified that just before the tenancy was to commence the landlord told them that the furnace is not working and would not be repaired when the tenancy was to commence. The tenant stated that they informed the landlord that they need a working furnace.

The tenant testified that things just got worst from there and then the landlord told them on March 30, 2020, one day before they were to move in, that they would not be giving them possession as they did not like their attitude. The tenant stated they had the right to inform the landlord that they are required to have the main heating repaired and not simply deny access because they had their personal differences. The tenant stated that they need the accommodation as they currently have no stable residence and their co-tenant JA, tenancy ends at the end of April 2019, as there are new owners taking possession.

The tenant stated that they text message the landlord on April 1, 2020, to get the keys; however, the landlord did not respond and has had no further communication.

The tenant testified that they just recently seen an advertisement that the landlord is now attempting to re-rent the premise. The tenant stated that they have waited for this premise for two months, and it is unreasonable for the landlord not give them possession, when the issue of the furnace could have been resolved. The tenant seeks an order of possession.

Analysis

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

Section 17 of the Act states a landlord may require a tenant to pay a security deposit as a condition of entering into a tenancy agreement. Section 15(b) of the Act states, standard term of every tenancy agreement come into effect whether or not the tenancy agreement is in writing.

In this case, I am satisfied that the parties entered into a tenancy agreement on February 11, 2020, when the landlord accepted the tenants' security deposit. This is

supported by copies of the etransfer filed in evidence showing the money was accepted by the landlord.

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, I am satisfied that there was a dispute between the landlord and the tenant regarding the heating of the rental premise, just prior to the tenancy commencing. However, I find this issue did not give the landlord the rights to deny the tenants possession of the rental unit on April 1, 2020. A tenancy can only be legally ended in accordance with the provision of the Act. I find the landlord has breached the Act, when they failed to give possession of the rental unit to the tenants on April 1, 2020.

I find the tenants are entitled to an order of possession pursuant to section 54 of the Act, **effective two days service upon the landlord**. The landlord is cautioned that if they fail to give the tenants possession of the rental unit as ordered, they could be subject to the cost of enforcement or any other loss the tenants may have suffered as a result of not giving them possession of the property on April 1, 2020.

This order may be enforced in the Supreme Court, subject to the ***Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency.***

As the tenants were successful with their application, I find the tenants are entitled to recover the cost of the filing fee from the landlord. Therefore, I grant the tenants a formal monetary order in the amount of \$100.00. This order may be enforced in the Provincial Court (Small Claims) as an order of the court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants are granted an order of possession. I grant the tenants a monetary order in the amount of \$100.00, to recover the cost of the filing fee.

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: April 16, 2020

Residential Tenancy Branch