



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on March 26, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a Mutual Agreement to End Tenancy dated February 29, 2020 (the "Mutual Agreement").
- an order granting recovery of the filing fee.

The Landlord, the Landlord's Agent J.C., the Tenant, and the Tenant's Representative S.F. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were 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. Are the Landlords entitled to an order of possession based on Mutual Agreement, pursuant to Section 55 of the *Act*?

2. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2014. The Tenant is required to pay rent in the amount of \$500.00 which is due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$250.00 which is currently being held by the Landlords. The Tenant continues to occupy the rental unit.

The Landlord testified that the parties came together on February 29, 2020 and mutually agreed to end the tenancy effective on March 31, 2020. The Landlord stated that the parties both signed the Mutual Agreement to End Tenancy dated February 29, 2020 agreeing to the tenancy ending on March 31, 2020. The Landlords provided a copy of the Mutual Agreement in support. The Landlord stated that the Tenant has not vacated the rental unit on the effective date of the Mutual Agreement. As such, the Landlords are seeking an order of possession based on the Mutual Agreement, as well as the return of the filing fee.

The Tenant's Representative responded by stating that the Tenant did sign the Mutual Agreement to End Tenancy on February 29, 2020. The Tenant's Representative stated that the Tenant was not aware that she was agreeing to end the tenancy on March 31, 2020, instead she was under the impression that she was agreeing to renewing the tenancy. The Tenant's Representative further explained that the Tenant should be entitled to three months of notice to end the tenancy based on the duration of the tenancy. Lastly, the Tenant's Representative stated that she paid the Landlord an extra \$200.00 in rent to extend the tenancy.

Analysis

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

According to Section 55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;

(b) 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;

(c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c.1) the tenancy agreement is a sublease agreement;

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I accept that both parties agreed that they came together on February 29, 2020 and signed a Mutual Agreement to End Tenancy Effective March 31, 2020. While the Tenant's Representative stated that the Tenant was unaware that she was agreeing to ending the tenancy, I find that it is the Tenant's responsibility to read the Notice she is agreeing to prior to signing it. I find that the Mutual Agreement to End Tenancy clearly indicates that the parties are agreeing to end the tenancy on the effective date.

In relation to the Tenant's Representative's statement that the Tenant should be afforded 3 months grace due to the length of the tenancy, I find that there is no such provision in the Act. I find that the Mutual Agreement complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective at 1:00 PM on May 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.

As the Landlords were successful with their Application, I find that they are entitled to recovering the \$100.00 filing fee paid to make the Application. Pursuant to section 67

and 72 of the *Act*, I find the Landlords are entitled to a monetary award in the amount of \$100.00 which may be deducted from the Tenant's security deposit currently being held by the Landlords.

Conclusion

The Tenant has breached the Act by not complying with the Mutual Agreement. The Landlords are granted an order of possession effective at 1:00 PM on May 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.

The Landlords are entitled to the return of the filing fee and are permitted to deduct \$100.00 from the Tenant's security deposit.

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: May 21, 2020

Residential Tenancy Branch