



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FFL

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on April 03, 2020 (the “Application”). The Landlord applied for an Order of Possession based on written notice ending the tenancy given by the Tenants. The Landlord also sought reimbursement for the filing fee.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Tenant M.L. provided the correct spelling of her last name which is reflected in the style of cause.

The Landlord submitted evidence prior to the hearing. The Tenants confirmed receipt of the hearing package and Landlord’s evidence. The Tenants had not submitted evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. 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 written notice ending the tenancy given by the Tenants?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted the first page of the written tenancy agreement. The parties agreed on the following. The tenancy started July 01, 2019 and is a month-to-month tenancy. Rent is \$1,050.00 per month due on the first day of each month. The Tenants paid a \$525.00 security deposit and \$345.87 pet damage deposit.

The Landlord submitted a copy of a written notice provided by the Tenants ending the tenancy June 01, 2020. It is dated March 16, 2020. It is signed by both Tenants.

The Landlord testified as follows. She received the Tenants' notice March 16, 2020. She accepted the notice and listed the unit for rent. Two weeks later, the Tenants asked to rescind the notice. She did not agree to this because the unit had already been re-rented.

Tenant K.T. advised that the Tenants will vacate the rental unit as soon as the current state of emergency is lifted. He acknowledged that the Tenants gave notice but noted that the current pandemic and state of emergency then occurred.

Analysis

Section 44 of the *Residential Tenancy Act* (the "Act") states:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice]...

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...

(4) A notice to end a tenancy given under this section must comply with section 52...

Section 55(2) of the *Act* states:

(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;

I am satisfied the Tenants gave the Landlord a notice ending the tenancy June 01, 2020. The notice is in evidence. The Tenants did not dispute that they did this.

I am satisfied based on the Landlord's testimony that the Landlord accepted the notice. Again, the Tenants did not dispute this.

Neither party raised an issue in relation to whether the notice complies with section 52 of the *Act* and therefore I have not considered this as I do not find it relevant to the decision in the circumstances.

Section 53 of the *Act* states that an incorrect effective date on a notice to end tenancy changes automatically. The effective date of June 01, 2020 does not comply with section 45(1)(b) of the *Act* because rent is due on the first day of each month. I consider the effective date to change to May 31, 2020 as this complies with section 45(1) of the *Act*.

I am satisfied the Tenants have given notice in accordance with section 45(1) of the *Act*. I am satisfied the Tenants ended the tenancy in accordance with section 44(1)(a)(i) of the *Act*. I find the Landlord is entitled to an Order of Possession pursuant to section 55(2)(a) of the *Act*. I issue the Landlord an Order of Possession effective at 1:00 p.m. on May 31, 2020.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Landlord can keep \$100.00 of the security deposit.

Conclusion

The Landlord is issued an Order of Possession pursuant to section 55(2)(a) of the *Act*. The Order is effective at 1:00 p.m. on May 31, 2020. The Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court **SUBJECT TO THE MINISTERIAL ORDER REFERRED TO ON THE LAST PAGE OF THIS DECISION.**

I award the Landlord reimbursement for the \$100.00 filing fee. The Landlord can keep \$100.00 of the 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 *Act*.

Dated: May 26, 2020

Residential Tenancy Branch