



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

On May 21, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

G.N. attended the hearing as counsel for the Landlord. The Tenant did not attend the 25-minute hearing.

G.N. advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on June 1, 2020 (the registered mail tracking number is noted on the first page of this Decision). He also advised that the Tenant was served the Notice of Hearing and evidence package by email on June 1, 2020 but there was no proof of service provided. While this Notice of Hearing package was not served within 3 days of May 21, 2020, pursuant to Rule 3.1 of the Rules of Procedure, based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing and evidence package five days after it was served by registered mail.

He also advised that additional late evidence was served to the Tenant on June 1, 2020 by email. Based on the state of emergency and subsequent Director's Order, service of documents by email is permitted; however, documents served in this manner are deemed received after three days. As service of this late evidence does not comply with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this late evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

G.N. advised that the tenancy started on July 1, 2019 as a fixed term tenancy for a period of one year, ending on June 30, 2020. Rent was currently established at \$1,600.00 per month and was due on the first day of each month. A security deposit of \$800.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

He submitted that the Notice was served by hand to the Tenant on February 24, 2020. The reason the Landlord checked off on the Notice was because "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)." As well, it further indicated that the close family member that would be occupying the rental unit would be "The landlord or the landlord's spouse." The effective date of the Notice was noted as April 30, 2020.

G.N. submitted that the address in dispute on the Application is the address of the lot; however, the subject of this dispute is a manufactured home on the lot that the Tenant occupies. He further submitted that the Landlord has constructed a house on the property as well; however, the municipality will not issue the Landlord an occupancy permit on the house as there are by-law zoning limits on the number of habitable units on a property. Therefore, the Landlord has given the Notice to the Tenant, not because he wants to occupy the rental unit, but because he needs the rental unit to be vacant so that he can then get an occupancy permit for his house.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy if the intention is for the Landlord or a close family member to occupy the rental unit, in good faith.

Furthermore, this Section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 53 of the *Act* states that any incorrect effective date of a Notice will automatically self-correct to the correct date.

Section 55(1) of the *Act* states that if the Tenant has not submitted an Application for Dispute Resolution seeking to cancel the Notice within the required timeframe and the Landlord's Notice complies with all the requirements of Section 52 of the *Act* and is upheld, the Landlord must be granted an Order of Possession.

When reviewing the evidence before me, the first issue I will address is the effective date of the Notice. While the Landlord indicated that the effective end date of the tenancy according to the Notice was April 30, 2020, I find it important to note that the parties had engaged into a fixed term tenancy agreement until June 30, 2020. As such, the Landlord cannot end this fixed term tenancy, by way of this Notice, any earlier than June 30, 2020. Therefore, as per Section 53 of the *Act*, this incorrect effective date on the Notice will automatically self-correct to June 30, 2020.

The second issue I will address is the Tenant's action after receipt of the Notice. The undisputed evidence before me is that the Tenant was served the Notice by hand on February 24, 2020. As the fifteenth day to dispute the Notice fell on March 10, 2020, the Tenant must have made an Application by this date at the latest. However, the undisputed evidence is that the Tenant did not dispute this Notice. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

The third issue I must also consider is the validity of the Notice and the purpose it was served. The consistent evidence is that the rental unit in dispute is the manufactured home that the Tenant occupies. However, there has been insufficient evidence presented that the Landlord would be occupying this manufactured home for a residential purpose to use as part of his living accommodation or living space. Rather, the purpose the Notice was served was to allow the Landlord vacant possession of the rental unit so that he could obtain an occupancy permit from the municipality that would then permit him to take occupancy of his house on the property.

As there is insufficient evidence to support that the Landlord served the Notice to occupy the rental unit, I am not satisfied, on a balance of probabilities, that the Landlord has established persuasive grounds to justify service of the Notice for the reason stated.

Therefore, I find that the Notice of February 24, 2020 is cancelled and of no force and effect. As such, the Landlord is also not subject to the compensatory requirements of the Notice for the one month's free rent. Furthermore, as the Notice is not valid, the Landlord would also not be subjected to a potential claim of 12 months' compensation for not occupying the rental unit and using it for the stated purpose.

As the Landlord was not successful in this Application, I find that he is not entitled to recover the \$100.00 filing fee.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of February 24, 2020 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: June 16, 2020

Residential Tenancy Branch