



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 03, 2020 (the “Application”). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 30, 2020 (the “Notice”).

Counsel for the Landlord appeared at the hearing for the Landlord. The Tenants did not appear at the hearing which lasted 17 minutes.

Counsel for the Landlord advised that the Tenants had sent her a letter withdrawing the Application. Counsel said this had been forwarded to the RTB. However, I did not have this correspondence and the Tenants were not present to confirm this. Therefore, I could not consider the Application withdrawn. I told Counsel this. Counsel advised that the Tenants have vacated the rental unit. Counsel sought an Order of Possession on behalf of the Landlord in any event.

I explained the hearing process to Counsel who did not have questions when asked.

Both parties submitted evidence prior to the hearing. Counsel confirmed the Landlord received the hearing package. Service of the Tenants' evidence was a non-issue as the Tenants only submitted the Notice and tenancy agreement between the parties.

Counsel advised that the Landlord's evidence was sent to the Tenants by email and posted to the door of the rental unit July 27, 2020. Counsel advised that the Tenants received the evidence as they referred to it in their letter withdrawing the Application. I do not find it necessary to decide service of the Landlord's evidence as I have not relied on it for this decision.

Counsel was given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice and submissions of Counsel. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Tenants submitted a written tenancy agreement and Counsel confirmed it is accurate. The tenancy agreement names the Landlord's parents as landlords. Counsel advised that the Landlord's parents acted as his agent in entering the tenancy agreement. The tenancy started June 01, 2016 and was for a fixed term ending May 31, 2017. Rent was originally \$3,000.00 per month. Counsel advised rent was reduced to \$2,800.00 per month earlier this year. Rent is due on the first day of each month.

The Tenants submitted the Notice. It is addressed to the Tenants and relates to the rental unit. It is signed and dated by Counsel. It has an effective date of August 31, 2020. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member.

Counsel advised that the Notice was served on the Tenants in person July 01, 2020. The copy of the Notice submitted by the Tenants states, "received July 1, 2020 11:20 am by [Landlord]...brought to the door of residence". Counsel confirmed all four pages of the Notice were served on the Tenants. Counsel acknowledged that the service date of the Notice changes the effective date of the Notice.

Counsel confirmed the Landlord and his wife intend to move into the rental unit.

Analysis

Rule 7.3 of the Rules of Procedure states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Tenants did not appear to provide a basis for the Application, and Counsel for the Landlord did appear to address the Application, I dismiss the Application without leave to re-apply.

Section 55(1) of the *Residential Tenancy Act* (the “*Act*”) states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Notice was issued pursuant to section 49(3) of the *Act*.

I am satisfied the Tenants received the Notice in person July 01, 2020 based on the submissions of Counsel and the handwritten note on the copy of the Notice submitted by the Tenants.

The Tenants had 15 days to dispute the Notice pursuant to section 49(8)(a) of the *Act*. The Tenants filed the Application July 03, 2020, within time.

However, the Tenants did not appear at the hearing and therefore the Application has been dismissed.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 49(7) of the *Act*.

I am satisfied based on the undisputed submissions of Counsel that the Landlord and his wife intend to move into the rental unit. I find the Landlord had grounds to issue the Notice and uphold the Notice.

Given I have dismissed the Application, found the Notice complies with section 52 of the *Act* and found the Notice valid, I issue the Landlord an Order of Possession pursuant to section 55(1) of the *Act*.

The Notice was served July 01, 2020. Therefore, pursuant to sections 49(2)(a) and 53 of the *Act*, the effective date of the Notice changes to September 30, 2020. Therefore, I issue the Landlord an Order of Possession effective at 1:00 p.m. on September 30, 2020.

Conclusion

The Landlord is issued an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective at 1:00 p.m. on September 30, 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.

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: August 4, 2020

Residential Tenancy Branch