



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: OPM, MNRL, FFL
 TT: CNC, MNDCT, LRE, OLC, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord’s Application for Dispute Resolution was made on July 12, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- a monetary order for unpaid rent;
- an order of possession based on a Mutual Agreement to End Tenancy dated June 14, 2020 (the “Mutual Agreement”); and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on July 16, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a One Month Notice for Cause (the “One Month Notice”);
- a monetary order for damage or compensation;
- a monetary order for cost of emergency repairs;
- an order that the Landlord comply with the Act;
- an order restricting the Landlord’s right to enter the rental unit; and
- an order granting the recovery of the filing fee.

The hearing was scheduled for 9:30am on August 18, 2020 as a teleconference hearing. H.L. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that H.L. and I were the only persons who had called into this teleconference.

H.L. testified the Application and documentary evidence package was served to the Tenants by registered mail on July 16, 2020. Copies of the Canada Post registered mail receipts were submitted in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on July 21, 2020, the fifth day after their registered mailings.

Preliminary Matters

As no one attended the hearing on behalf of the Tenants, I dismiss their Application without leave to reapply. The hearing continued based on the Landlord's Application.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on a mutual agreement to end tenancy. The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply.

H.L. was 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. Is the Landlord entitled to an order of possession based on Mutual Agreement, pursuant to Section 55 of the Act?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

H.L. testified that the tenancy began on August 15, 2019. The Tenant is required to pay rent in the amount of \$1,200.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00 which is currently being held by the Landlord.

H.L. stated that the Tenant listed on the tenancy agreement was unable to pay rent to the Landlord in June 2020 and notified the Landlord they intended on moving out as a result. H.L. stated that the parties had entered into a fixed term tenancy, but that the Landlord mutually agreed to end the tenancy early.

H.L. stated that the Tenant and the Landlord came together on June 14, 2020 and mutually agreed to end the tenancy effective on June 14, 2020. The Landlord stated that the parties both signed the Mutual Agreement to End Tenancy dated June 14, 2020. The Landlord provided a copy of the Mutual Agreement in support. H.L. stated that the Tenant has vacated the rental unit on the effective date of the Mutual Agreement, however, there is still someone living in the rental unit that is not known to the Landlord. As such, the Landlord is seeking an order of possession based on the Mutual Agreement, as well as the return of the filing fee.

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.

According to the Residential Policy Guideline 13;

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

In this case, I accept that both parties listed on the tenancy agreement came together on June 14, 2020 and signed a Mutual Agreement to End Tenancy Effective June 14, 2020. I accept that the Tenant listed on the tenancy agreement moved out in compliance with the Mutual Agreement, however, there is an unknown occupant residing in the rental unit. I find that this individual is an occupant who has no rights or obligations under the tenancy agreement.

I find that the Mutual Agreement complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 days 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 Landlord was successful with their Application, I find that they are entitled to recovering the \$100.00 filing fee paid to make the Application, which may be deducted from the Tenant's security deposit currently being held by the Landlord.

Conclusion

The Landlord is granted an order of possession effective 2 Days 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: August 18, 2020

Residential Tenancy Branch