



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession based on a mutual agreement to end the tenancy and to recover the cost of the filing fee.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing,

Issue(to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on March 1, 2019. Rent in the amount of \$2,100.00 was payable on the first of each month. A security deposit of \$1,050.00 was paid by the tenant.

Counsel for the landlord stated that on April 6, 2020, the landlord received an email from the tenant wanting to end the tenancy by mutual agreement and the tenant requested that they not pay rent for three months and they would agree to move out by July 1, 2020.

Counsel submits that the landlord and the tenant signed the mutual agreement on April 15, 2020 with an effective date of July 1, 2020. Counsel submits the tenant has benefited from the mutual agreement as they have not paid rent for May, June, and July

2020. Counsel submits that the landlord did agreed to extend the vacancy date to August 1 and accepted occupancy rent. However, the tenant has not vacated.

The tenant testified that they were give a notice to end tenancy for landlords use of Property on April 1, 2020. The tenant submits that they informed the landlord that evictions had been halted.

The tenant testified that they did send the landlord an email on April 6, 2020, requesting that they sign a mutual agreement to end the tenancy and requested additional compensation. The tenant stated that they agreed to end the tenancy by mutual agreement as they thought the landlord's son was moving into the premise.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, there was a prior notice to end tenancy that was issued on April 1, 2020. That notice was not valid as the landlord was not entitled to end the tenancy at this time due to a state of an emergency order. That notice is not valid and has no force or effect..

On April 6, 2029, the tenant request that they enter into a mutual agreement to end tenancy, and the tenant requested three free months of rent. Which I note, this amount is a far greater amount than any compensation they would be entitled to receive under the Act.

On April 15, 2020, the parties signed the mutual agreement to end the tenancy, with the only conditions was that the tenant would live rent free for April, May, and June 2020 and vacate on July 1, 2020..

I find the mutual agreement to end tenancy binding on the parties. I find the tenancy legally end on July 1, 2020, by mutual agreement and the tenant is overholding the premise as an occupant.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. 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.

Conclusion

The tenancy ended by mutual agreement. The tenant did not vacate the premise. The landlord is granted an order of possession..

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: September 11, 2020

Residential Tenancy Branch