



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession for landlord's use of property. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing materials upon each other. The landlord testified that he taped the proceeding package to the tenant's door on August 22, 2020 and served the evidence package to the tenant, in person, with his wife present as a witness, on August 17, 2020.

The tenant testified that he found the proceeding package taped to his door in late August 2020 although he did not know the date he received it. The tenant denied receiving an evidence package from the landlord. Rather, the tenant described receiving a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") in the mailbox in late August 2020. The tenant does not know what date it was put in the mailbox as he stated he does not check his mail regularly or frequently.

The landlord did not have his wife present at the hearing to testify as to service of documents and did not call her as a witness.

As for the tenant's evidence package, the tenant testified that he left it on the threshold of the landlord's door on September 15, 2020. The landlord denied receiving an evidence package from the tenant. Rather, the landlord described receiving two hand-written pages left at his back door on August 16, 2020.

I was satisfied the tenant was notified of this proceeding as he acknowledged receiving the Notice of Dispute Resolution Proceeding and the 2 Month Notice. I admitted the 2

Month Notice into evidence and I informed the parties that I would make this decision based on the 2 Month Notice and their oral testimony given the opposing submissions concerning service of documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of property?

Background and Evidence

The parties were in agreement that the tenancy started on January 15, 2015. Under the terms of tenancy, the tenant was required to pay a security deposit of \$425.00 and a pet damage deposit of \$200.00. The rent was set at \$850.00 payable on the first day of every month.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 26, 2020 with a stated effective date of September 30, 2020 to the tenant.

The parties were in agreement that the landlord gave and the tenant received all four pages of the 2 Month Notice; however, the date the 2 Month Notice was served was uncertain, as described below.

The landlord provided varying submissions concerning the date the 2 Month Notice was served upon the tenant. The landlord initially testified that the 2 Month Notice was served to the tenant in person, with the landlord's wife present as a witness, on August 26, 2020 and that it was not served upon the tenant any earlier than that date. The landlord subsequently changed his testimony to state the 2 Month Notice was served to the tenant on July 26, 2020. Then the landlord changed his testimony again to state the 2 Month Notice was served on July 27, 2020.

The tenant testified that he found the 2 Month Notice in the mailbox in late August 2020 but he does not know how it was put in the mailbox, whether it was mailed to him or placed in the mailbox by the landlord. The tenant stated he does not know how long the 2 Month Notice had been sitting in the mailbox as he does not check his mail regularly or frequently. The tenant acknowledged that he did not file an Application for Dispute Resolution to dispute the 2 Month Notice after receiving it and he is looking for new living accommodation.

The tenant acknowledged he withheld rent for September 2020 as the compensation for receiving a 2 Month Notice; however, the tenant also continues to occupy the rental unit and has not paid rent for October 2020. The tenant stated he would pay the rent for September 2020 today.

The parties were in dispute as to whether rent was paid for August 2020.

Analysis

Upon consideration of everything before me, I accept the unopposed testimony that the tenant received four pages of a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). Upon review of the 2 Month Notice before me, I find it is in the approved form and duly completed.

Given the landlord's inconsistent submissions as to when the 2 Month Notice was served, I accept the tenant's testimony that he received it in late August 2020.

As provided under section 49 of the Act, a tenant in receipt of a 2 Month Notice has 15 days to file an Application for Dispute Resolution to dispute it and if the tenant does not file to dispute it, the tenant is conclusively presumed to have accepted the tenancy will end.

In this case, the tenant has not filed to dispute the 2 Month Notice and the 15 day time limit for doing so has passed. Accordingly, the tenant is conclusively presumed to have accepted that the tenancy will end pursuant to the 2 Month Notice and I find the tenant is required to vacate the rental unit when the 2 Month Notice takes effect.

Having found the 2 Month Notice was received by the tenant in late August 2020, the effective date of the 2 Month Notice automatically changes to read October 31, 2020 in keeping with section 53 of the Act. Therefore, I provide the landlord with an Order of Possession effective at 1:00 p.m. on October 31, 2020.

Having heard the tenant withheld rent for September 2020 as compensation payable for receiving the 2 Month Notice but the tenancy is set to end October 31, 2020 pursuant to the 2 Month Notice, I find the tenant is obligated to pay rent for September 2020. **I order the tenant to pay rent for September 2020 immediately.** If the tenant fails to do so, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and the tenancy may come to an end sooner than October 31, 2020.

I make no finding or order with respect to rent for August 2020 as that issue was not raised on the Application for Dispute Resolution and the parties were not prepared to resolve that dispute during this proceeding. I suggested the parties try to resolve the dispute concerning payment for August 2020 between themselves but if they cannot the landlord is at liberty to file another Application for Dispute Resolution to seek recovery of unpaid rent for August 2020.

Conclusion

The tenancy is set to end on October 31, 2020 and the landlord is provided an Order of Possession effective at 1:00 p.m. on October 31, 2020.

The tenant is required to pay rent that was due for September 2020 immediately. If the tenant fails to do so the landlord may serve the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent which may bring the tenancy to an end earlier than October 31, 2020.

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: October 02, 2020

Residential Tenancy Branch