



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on September 25, 2020 (the "Application"). The Landlord applied for an order of possession for Landlord's use of the property, pursuant to the *Residential Tenancy Act* (the "Act").

The hearing was scheduled for 11:00 A.M. on November 27, 2020 as a teleconference hearing. Only the Landlord attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 18 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 the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenants in person on September 30, 2020. Based on the uncontested oral testimony, 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 September 30, 2020. The Tenants did not submit documentary evidence in response to the Application.

The Landlord 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 a Two Month Notice for Landlord's Use of the Property (the "Two Month Notice") dated June 25, 2020 pursuant to Section 49 and 55 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on July 15, 2014. Currently, the Tenants are required to pay rent in the amount of \$1,600.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$750.00 which the Landlord continues to hold.

The Landlord testified that he and his children intend on moving into the rental unit, therefore, require the rental unit to be vacated by the Tenants.

The Landlord testified that he served the Tenants in person with the Two Month Notice on June 26, 2020 with an effective vacancy date of August 31, 2020. The Landlord provided a copy of the Two Month Notice as well as a signed proof of service in support. The Landlord's reason for ending the tenancy on the Two Month Notice is;

“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).”

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. I accept that the Landlord stated that he and his children intend on occupying the rental unit as soon as it is vacant.

The Landlord stated that he served the Tenants in person with the Two Month Notice on June 26, 2020, with an effective vacancy date of August 30, 2020. I find the Two Month Notice is deemed sufficiently served to the Tenants on June 26, 2020 pursuant to Section 88 and 90 of the Act.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

According to subsection 49(9) of the Act, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, as the Tenants were deemed served with the Two Month Notice on June 26, 2020, as such, the Tenants had until July 11, 2020 to make an Application for

dispute resolution, or are conclusively presumed to have accepted the tenancy has ended on the effective date of the Two Month Notice.

As the Tenants did not apply to dispute the Two Month Notice in accordance with Section 49(8), I find that they are conclusively presumed to have accepted the end of the tenancy according to effective date, August 31, 2020.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenants, 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 Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

The Landlords and the Tenants should be aware that if the Landlords fail to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Conclusion

The Tenants have breached the Act by not complying with the Two Month Notice. The Landlord is granted an order of possession effective 2 (two) days, after service on the Tenants. The order should be served to the Tenants as soon as possible and 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 *Residential Tenancy Act*.

Dated: November 27, 2020

Residential Tenancy Branch