



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

On September 18, 2020, the Landlord submitted an Application for Dispute Resolution requesting an order of possession for the rental unit based on the issuance of a notice to end tenancy that was not disputed by the Tenants.

The matter was set for a conference call hearing. The Landlord's legal counsel who has power of attorney for the Landlord, and the Tenant, Mr. C.M.O. attended the conference call hearing. The Tenant was also assisted by legal counsel.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Preliminary and Procedural Matters

The Landlord's counsel asked to amend the application to include the name of the owner. The application is amended accordingly.

Issues to be Decided

- Is the Landlord entitled to an order of possession for the rental unit based on an undisputed notice to end tenancy?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

At the start of the hearing the Tenant's counsel stated that they do not dispute that the tenancy is ending but they are asking for more time to vacate the rental unit. Counsel submitted that the Tenant recently had a stroke and is left paralyzed and confined to a wheelchair.

The parties were given an opportunity to enter into a settlement agreement for a specific date for the tenancy to end and an order of possession for the Landlord. A settlement agreement was not reached.

The hearing proceeded.

The Landlord's counsel confirmed that a One Month Notice to End Tenancy for Cause dated August 20, 2020 ("the One Month Notice") was served to the Tenants by posting a copy of the Notice to the Tenants' door on August 22, 2020. The Landlord also served a copy to the Tenants by registered mail sent on August 21, 2020. The Landlord provided a proof of service document that indicates the One Month Notice was posted on August 22, 2020. The Landlord also provide a copy of a registered mail receipt and tracking information as proof of service.

The reasons selected by the Landlord within the One Month Notice are as follows:

- *Tenant is repeatedly late paying rent*
- *Tenant has allowed an unreasonable number of occupants in the unit /site*
- *Tenant has assigned or sublet the rental unit/ site without the Landlord's written consent.*

The One Month Notice provides that the Tenants must move out of the rental unit by September 30, 2020.

The One Month Notice also provides information on the rights of a Tenant. At the top of the form the Notice provides: "This is a legal notice that could lead to you being evicted from your home." The Notice also informs the Tenants of the right to dispute the Notice within 10 days after receiving it. The Notice informs the Tenants that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the Notice.

The Tenant testified that he does not know when the Notice to end tenancy was received.

The Landlord's counsel submitted that the Tenant was aware of the one Month Notice on or before September 8, 2020 and that there is documentation to support this. The Tenants did not dispute the One Month Notice.

The Landlord seeks an order of possession for the rental unit, based on the undisputed One Month Notice.

Analysis

Section 88 and 90 of the Act permits a document to be served on a person by posting the document or sent by registered mail. The Act provides that a document is deemed to be received on the third day after it is posted, and on the fifth day after it is sent by registered mail.

I accept the Landlord's evidence that the One Month Notice was posted to the Tenants' door and was also sent by registered mail. I find that the Tenants are deemed to have received the One Month Notice on August 25, 2020, the third day after it was posted.

I find that the Tenants did not dispute the One Month Notice and the 10 Day time period for making an application has expired. In addition, Section 66 of the Act provides that the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice. I find that the effective date [September 30, 2020] of the One Month Notice has passed.

Section 55 of the Act provides that a Landlord may request an order of possession of a rental unit when a notice to end tenancy is given by a Landlord and the Tenant has not disputed the Notice and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two (2) days after service on the Tenants. 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 Tenant and Tenant's counsel agreed at the hearing that the Landlord can serve the order of possession to the Tenant's counsel.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant the Landlord a monetary order in the amount of \$100.00.

Conclusion

The Tenants received a One Month Notice to End Tenancy for Cause and did not file to dispute the Notice. The Tenants are presumed under the legislation to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two (2) days after service on the Tenants.

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 06, 2020

Residential Tenancy Branch