



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent.

The landlord appeared at the hearing and was affirmed. The landlord was accompanied by his wife. There was no appearance on part of the tenant despite leaving the teleconference call open 25 minutes.

The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceeding and other required documents in person on November 2, 2021 in the presence of a witness. The landlord provided a signed Proof of Service form as evidence. I was satisfied the tenant was served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Shortly after the hearing commenced, the landlord stated that he and the tenant came to mutual agreement to end the tenancy effective November 30, 2021. The landlord testified they signed a Mutual Agreement to End a Tenancy form approximately one week ago.

I authorized and ordered the landlord to provide me with a copy of the Mutual Agreement, which he did.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The one year fixed term tenancy started on March 1, 2021. The landlord collected a security deposit of \$900.00 and the tenant is required to pay rent of \$1800.00 on the first day of every month.

On October 9, 2021 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"). The tenant did not pay the outstanding rent or file to dispute the 10 Day Notice. The landlord provided a copy of the first page of the 10 Day Notice only, an audio recoding as proof of service of the 10 Day Notice, and a photograph of the tenant holding what appears to be the 10 Day Notice.

The landlord testified that the tenant did not vacate the rental unit and did not pay any monies toward use and occupancy for November 2021.

The landlord originally applied for an Order of Possession in October 2021, based on the 10 Day Notice but, at the hearing, the landlord submitted the parties reached a mutual agreement, in writing, to end the tenancy at noon on November 30, 2021. The landlord provided a copy of the Mutual Agreement to End Tenancy as evidence, as I had authorized and ordered him to do.

Analysis

Section 55 of the Act provides that a landlord may seek and obtain an Order of Possession under the following circumstances:

(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.

[My emphasis underlined]

Although the landlord requested an Order of Possession for unpaid rent on the Application for Dispute Resolution, I grant the landlord an Order of Possession based on a signed Mutual Agreement to End a Tenancy as this is beneficial for the tenant since it ends the tenancy on a later date. Therefore, I provide the landlord with an Order of Possession effective at noon on November 30, 2021 based on the signed Mutual Agreement.

Conclusion

The landlord is provided an Order of Possession effective at noon on November 30, 2021 based on a duly executed Mutual Agreement to End a Tenancy.

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 23, 2021

Residential Tenancy Branch