



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

On March 13, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act*.

Both the Landlord and the Tenant attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenant the Notice of Hearing package by posting it to the Tenant's door on or around March 17, 2022, and the Tenant confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently served with the Notice of Hearing package.

He then advised that his evidence was emailed to the Tenant on June 4, 2022. The Tenant confirmed that he received this package and that he had no position with respect to how this evidence was served. Based on this testimony, I am satisfied that this evidence was served in accordance with the timeframe requirements of Rule 3.14

of the Rules of Procedure. As such, this evidence will be accepted and considered when rendering this Decision.

The Tenant acknowledged that he did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the most current tenancy agreement started on January 1, 2021, and that it was a fixed term tenancy of one year ending on January 30, 2022. Rent was established at \$750.00 per month and was due on the first day of each month. A security deposit of \$325.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence; however, the resolution of the image submitted was poor, and it was not possible to read any of the information contained within this document.

The Landlord advised that the Notice was served to the Tenant on July 1, 2021, and the reason the Landlord served the Notice is because "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)". In addition, the box indicating that "The landlord or the landlord's spouse" would be occupying the rental unit was checked off. Similar to the quality of the tenancy agreement that was submitted as documentary evidence, the image quality of the Notice was poor, and it was difficult to read much of

the Notice. However, the Landlord testified that the effective end date of the tenancy was noted on the Notice as September 1, 2021.

When it was pointed out to him that important parts of the Notice were left blank, such as the dispute address and the date it was signed, he viewed his copy of the Notice and stated that he was unsure why areas of the Notice were incomplete. He then stated that he had a completed copy of the Notice in his possession, and he was not sure why this was not submitted as documentary evidence. However, he stated that the form that he was looking at was the RTB – 34. I find it important to note that this form that he references is a Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities, and it is not a Two Month Notice to End Tenancy for Landlord's Use of Property. So clearly, he is looking at a different form.

When he was asked why he only applied for an Order of Possession over six months after he was supposed to take possession of the rental unit on September 1, 2021 according to the Notice, he stated that he “decided to let things go because he did not feel he needed to do so at the time.” As well, he stated that he was “not physically able to move into the property.”

He confirmed that he has been collecting rent from the Tenant since the effective date of the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

When reviewing the totality of the evidence before me, I find it important to note that the Landlord was extremely disorganized, had very little knowledge of the details of this tenancy, and had little awareness of his rights and responsibilities as a Landlord under the *Act*. I found that his ambivalent demeanour during the hearing reflected the manner with which he approached and managed this tenancy.

In viewing the Notice that was submitted as documentary evidence, it is clearly incomplete and does not comply with Section 52 of the *Act*. As well, given the fact that the Landlord stated that he completed an entirely different form, I am satisfied that he never properly filled out a Two Month Notice to End Tenancy for Landlord's Use of Property and served it on the Tenant. As such, I find that the Notice of July 1, 2021 is cancelled and of no force and effect.

Even if I were to accept that this Notice was valid, I find it important to note that the Tenant was in a fixed term tenancy that started on January 1, 2021, that was slated to end on January 30, 2022. As this was served on July 1, 2021 for an effective date of September 1, 2021, Section 49(a)(iii) prohibits this type of Notice being effective for any earlier than the end of the fixed term. Clearly, based on the Landlord's reaction in the hearing, he was unaware of this.

Moreover, based on this Notice, given that the Landlord was allegedly planning on moving in on September 1, 2021, I note that he submitted no documentary evidence of making plans to move in on that date. If I were to accept that the Landlord legitimately wanted to move in and occupy the rental unit after September 1, 2021, there was no documentary evidence submitted that would corroborate this submission. Furthermore, if this was truly his intention, I note that he did not make an Application for Dispute Resolution seeking an Order of Possession at any time after the Tenant's right to dispute the Notice had passed. It is not clear to me why he would not have applied for an Order of Possession if he genuinely planned to occupy the rental unit and the Tenant had not given up vacant possession of the rental unit. This causes me to question the credibility of the Landlord, and the reliability of his submissions on the whole.

In addition, after the effective date of the Notice had passed, the Landlord acknowledged to have accepted rent for each month after that. If it was truly his intention to occupy the rental unit, it is not clear to me why he would continue to accept rent and not apply for an Order of Possession. Even if I were to accept that the Notice was valid, I find that the collection of rent has reinstated the tenancy, in any event.

Finally, given that the Landlord allegedly had plans to occupy the rental unit on September 1, 2021, I do not accept that the Landlord could then wait over six months later to apply for an Order of Possession and reasonably expect to be granted possession of the rental unit. For all of the reasons listed, I do not find that the Notice is valid. Furthermore, I am doubtful that the Notice was served in good faith and that the Landlord would have satisfied this intention, as described in Policy Guideline 2A. This is evident in his testimony that he “decided to let things go because he did not feel he needed to do so at the time” and that he was “not physically able to move into the property.”

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord’s Use of Property of July 1, 2021 to be cancelled and of no force or effect.

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: June 22, 2022

Residential Tenancy Branch