



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for the landlords' use of the residential property pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:16 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. Landlord YL and her agent ("**HL**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that YL, HL, and I were the only ones who had called into the hearing.

HL testified she served that the tenant with the notice of dispute resolution package and supporting documentary evidence via registered mail on April 28, 2022. The landlords provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these documents on May 3, 2022, five days after HL mailed them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of HL, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The rental unit is a basement suite located in a single-detached house. The tenant and the former owner of the rental unit entered into a written, fixed term tenancy agreement starting February 1, 2021 and ending January 31, 2022. In June 2021, the landlords purchased and took possession of the residential property and moved into the upper suite. Monthly rent for the rental unit is \$1,100 and is payable on the 30th day of each month. The tenant paid the prior owner of the rental unit a security deposit of \$550, which the prior owner transferred to the landlords and which the landlords hold in trust for the tenant.

On March 23, 2022, the landlords served the tenant with a two month notice to end tenancy for landlord's use of the property (the "**Notice**") via registered mail. They provided a Canada Post registered mail tracking number confirming this mailing. The effective date of the Notice was May 31, 2022. The Notice specified the reason for ending the tenancy as "the father or mother of the landlord" will occupy the rental unit.

HL testified that the landlord YL's mother intends to move into the rental unit when the tenant vacates it.

The tenant did not dispute the Notice nor did he vacate the rental unit by its effective date. The tenant continues to reside in the rental unit.

Analysis

Section 49 of the Act, in part, states:

Landlord's notice: landlord's use of property

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[...]

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

[...]

(9) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Based on HL's testimony, supported by the registered mail tracking number, I find that the landlord served the tenant with a copy of the Notice on March 23, 2022. Per section 90 of the Act, this package is deemed served on March 28, 2022, five days after it was mailed.

As such, the tenant has 15 days from that date to dispute the Notice. He did not do this within this time frame, or at all. As such, per section 49(9) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, May 31, 2022.

I have reviewed the Notice, and find that it complies with the form and content requirements set out at section 52 of the Act.

I find that the landlords are entitled to an order of possession. At the hearing, HL stated that the landlords would like vacant possession of the rental unit at the end of the month.

Pursuant to section 72(1) of the Act, as the landlords has been successful in the application, they may recover the filing fee from the tenant. Pursuant to section 72(2) of the Act, the landlords may retain \$100 of the security deposit in partial satisfaction of this amount. They must handle the balance of the security deposit in accordance with section 38 of the Act.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords by August 31, 2022 at 1:00 pm.

I order the landlords to serve the tenant with a copy of this decision and attached order no later than three days after receiving it from the Residential Tenancy Branch.

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: August 15, 2022

Residential Tenancy Branch