



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPL FF

Introduction

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

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

The hearing was conducted by conference call. All named parties attended the hearing.

Issues

Is the landlord entitled to an order of possession for landlord's use of property (the "Two Month Notice")?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The landlords A.P. and J.P. are currently involved in a marital dispute. A.P. has not resided at the property for over a year. J.P. continues to reside upstairs. The tenant resides downstairs.

The tenancy originally began on July 15, 2019. A copy of the original tenancy agreement was not provided on file.

On January 29, 2022, the landlord J.P. entered into a new fixed term tenancy with the tenant with an end date of April 30, 2023.

A.P. is not listed as a landlord on the new lease but she testified that she is still an owner on title and that litigation involving the property is pending.

A.P. issued a Two Month Notice to the tenant on January 31, 2022 with an effective date of March 31, 2022.

J.P. testified that he does not agree with the Two Month Notice being issued to the tenant as he entered into a fixed term tenancy with the tenant prior to the notice being served.

A.P. submits that the fixed term tenancy was only entered into after she gave the tenant verbal notice of her intention to move into the unit.

The tenant had previously disputed the landlord's Two Month Notice but her application was dismissed as she failed to serve the landlord with a copy of the application.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. As per subsection (2)(c), a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be not earlier than the date specified as the end of the tenancy, if the tenancy agreement is a fixed term tenancy agreement.

The landlord J.P. has entered into a fixed term tenancy with the tenant which does not have an end date until April 30, 2023. There was no evidence before me that J.P. had no legal authority to renew the lease. Whether or not this happened after the tenant was given verbal notice by A.P. is irrelevant. The fact is that one of the landlords has entered into a legal contract proving the tenant with accommodation until at least April 30, 2023.

I find the effective date on the Two Month Notice is earlier than the date specified as the end of the tenancy as per the fixed term agreement. In addition, I find this is clearly a case of a marital dispute involving the landlord's and the tenant is unfortunately being dragged into the middle of it. As a result, I find the Two Month Notice dated January 31, 2022, to be invalid and hereby cancelled.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: October 03, 2022

Residential Tenancy Branch