



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

An order of possession pursuant to 2 Month Notice to End Tenancy for Landlord’s Use, pursuant to sections 49 and 55; and

Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord was represented at the hearing by her daughter/agent AL (the “landlord”). The tenant attended the hearing and was assisted by his daughter/interpreter, AL (the “tenant”) and an interpreter, TT. The tenant acknowledged service of the landlord’s Notice of Dispute Resolution Hearing at the commencement of the hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Can the landlord recover the filing fee/

Background and Evidence

The rental unit is a basement unit located in the landlord’s house with the landlord occupying the upper unit.

The landlord gave the following testimony. The tenancy began over 15 years ago and it is unknown if there was a written tenancy agreement. The tenant currently pays rent in the amount of \$800.00 per month and the tenant is current in his rent.

On May 19, 2022, the landlord's agent/daughter personally served the tenant with a 2 month notice to end tenancy for landlord's use. A copy of the notice to end tenancy was provided as evidence and states the rental unit will be occupied by the landlord. The tenant's name appears on the notice in Chinese, however the landlord testified that the name appearing on the form is the same as the name on this application.

The landlord testified that her 90 year-old mother (the owner of the rental unit) fell, breaking her shoulder. After months recovering in the hospital, she now has difficulty climbing stairs. Further, her mother has to go for kidney dialysis three times a week and going up and down the stairs to the upper level of the house is both exhausting and dangerous. The landlord submitted letters from her social worker and her family doctor stating the same.

The tenant acknowledged being personally served with the notice to end tenancy in late May, telling him to move out by the end of July. He does not speak or read English. When he received the notice to end tenancy, he did not give it to anybody else to translate into English for him. He never reached out to anybody to get help and didn't understand he had to file a dispute. The tenant didn't have the money to move or find a new place to live. His pension is only \$800.00 per month, the amount of rent he pays monthly.

The tenant's daughter, appearing with the tenant for today's hearing testified that she had never seen the notice to end tenancy until today. She argues that since the document was not written in a language the tenant understands, it's unfair to end the tenancy for his failure to file a dispute within 15 days.

Analysis

I have reviewed the landlord's notice and I find it complies with the form and content provisions as set out in section 52 of the Act.

Section 55(2) states:

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.

Pursuant to section 55(4)(a), In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes], grant an order of possession.

Based on the landlord's testimony and the tenant's acknowledgement, I find the landlord personally served the tenant with the 2 Month Notice to End Tenancy for Landlord's Use on May 20, 2022 in accordance with sections 88 and 90 of the Act. Pursuant to section 49(8), the tenant may dispute the notice by making an application for dispute resolution within 15 days after receiving the notice. In this case, the tenant did not make the application by June 05, 2022, within the 15 days, or at any time after receiving the notice to end tenancy. Consequently, I find the tenant is conclusively presumed to have accepted the tenancy ended on July 31, 2022, the effective date stated on the notice and must move out of the rental unit. As that has not happened, I grant the landlord an order of possession effective December 31, 2022 in accordance with section 55(4) of the Act.

As the landlord's application was successful, the landlord is entitled to recover the filing fee of \$100.00.

Conclusion

I grant the landlord an order of possession effective December 31, 2022.

I award the landlord a monetary order in the amount of \$100.00.

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: December 21, 2022