



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding MCGILL WEST INVESTMENTS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord March 15, 2023 (the “Application”). The Landlord applied:

- For an Order of Possession based on a tenant’s notice to end tenancy
- To recover the filing fee

B.C. and K.C. appeared at the hearing for the Landlord. Tenant A.R. (the “Tenant”) appeared at the hearing with Legal Counsel and an Articling Student. I explained the hearing process to the parties. B.C., K.C. and the Tenant provided affirmed testimony.

The Landlord provided evidence for the hearing. The Tenants did not provide evidence. Legal Counsel confirmed receipt of the hearing package and Landlord’s evidence.

The Landlord submitted an Amendment on April 12, 2023, seeking unpaid rent. Legal Counsel disputed that the Amendment should be allowed because it was only received by the Tenants six days before the hearing. I did not allow the Application to be amended because of when the Amendment was submitted and served. Rule 4.6 of the Rules of Procedure requires amendments to be received by the respondent not less than 14 days before the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on a tenant's notice to end tenancy?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

There is no issue that there was a tenancy agreement between the parties. The tenancy agreement provided shows rent was due by the first day of each month.

The Landlord seeks an Order of Possession based on a prior RTB Decision. The Tenants were found to be co-tenants of S.Q. The prior Arbitrator confirmed S.Q. ended the tenancy which ended the tenancy for all tenants. The prior Arbitrator stated that the Tenants were overholding, meaning remaining in the rental unit after the tenancy had ended. B.C. said nothing had been done between the parties to re-instate the tenancy or to enter into a new tenancy agreement.

Legal Counsel agreed an Order of Possession should be issued. Legal Counsel asked that the effective date of the Order of Possession be May 01, 2023, at noon. Legal Counsel relied on RTB Policy Guideline 54. Legal Counsel said the Tenants had paid rent for April and therefore the Order of Possession should not be effective until the end of the month. Legal Counsel relied on the length of the tenancy as another reason the effective date of the Order of Possession should be the end of the month. Legal Counsel said that, in the alternative, the Tenants should only have to pay rent up until the effective date of the Order of Possession.

The Tenant said they moved into the rental unit July 01, 2020.

Legal Counsel submitted that the Landlord should not be reimbursed for the filing fee because they rejected a reasonable settlement offer from the Tenants.

In reply, B.C. said they would return rent paid for the period the Tenants no longer live in the rental unit. B.C. denied there was a settlement offer made by the Tenants. B.C. said the Landlord wants an Order of Possession effective two days after service on the Tenants.

In further reply, Legal Counsel noted that B.C. referred to a settlement offer by the Tenants during settlement discussions in the hearing.

Analysis

I issue the Landlord an Order of Possession based on a tenant's notice to end tenancy under section 55 of the *Act* because the parties agreed about this.

The issue between the parties is the effective date of the Order of Possession. RTB Policy Guideline 54 addresses this issue and I have considered it.

I issue the Landlord an Order of Possession effective at 1:00 p.m. on April 30, 2023, for the following reasons. The tenancy has been ongoing for more than two years. The Tenants have paid their rent amount for April. This Decision is being issued April 24, 2023, and there is very little difference between a two-day Order of Possession and an Order effective at the end of the month. The tenancy ended under a tenant's notice to end tenancy and not under section 47 of the *Act* for cause. The Order of Possession is not effective May 01, 2023, because this would be contrary to the *Act* given rent under the tenancy was due on the first day of each month.

I award the Landlord the \$100.00 filing fee because the Tenants still lived in the rental unit when the Application was filed and at the time of the hearing. Further, the Landlord has been successful in the Application as it relates to being issued an Order of Possession. I do not accept Legal Counsel's submission that the result should be otherwise. The Landlord can withhold \$100.00 from the Tenants' security deposit under section 72(2) of the *Act*.

Conclusion

The Landlord is issued an Order of Possession **effective at 1:00 p.m. on April 30, 2023**. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord can keep **\$100.00** of the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 24, 2023