



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing dealt with a landlord's application for an Order of Possession for landlord's use of property.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

I confirmed the parties had served the other party with their hearing materials and evidence and I admitted the materials for consideration in making this decision. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Award of the filing fee.

Background and Evidence

The tenant moved into the rental unit in 2017; however, the parties executed a new tenancy agreement that started on November 1, 2021 for a fixed term of one year. The tenancy agreement provided that at the end of the fixed term the tenancy may continue on a month to month basis.

On August 14, 2022 the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") with a stated effective date of October 31, 2022.

The landlord uploaded only the first two pages of the four-page Two Month Notice; however, both parties provided consistent testimony that the landlord gave the tenant all four pages. From the two pages that were uploaded, I am satisfied that the form used by the landlord was in the approved form and it was duly completed since the last two pages of a Two Month Notice only contains information written by the Residential Tenancy Branch. The stated reason for ending the tenancy is so that the landlord's child may occupy the rental unit.

The tenant did not file an Application for Dispute Resolution to dispute the Two Month Notice.

The tenant began looking for new accommodation starting August 15, 2022 but the tenant did not find something affordable for their family. On October 28, 2022 the parties agreed to extend the end of the tenancy until the end of November 2022 and that the month of November 2022 would be the tenant's last month of occupancy. The tenant was provided compensation equivalent to one month's rent by not paying rent for the month of November 2022. However, the tenant did not move out at the end of November 2022 as agreed.

When the tenants did not move out at the end of November 2022 an argument ensued between the parties. The landlord demanded the tenant pay a higher amount of rent and the tenants paid \$1836.00 for the month December 2022. The tenant has paid rent of \$1836.00 for the months of December 2022 through May, which the landlord has accepted for "use and occupancy only".

Both parties provided consistent testimony that the increase from \$1800.00 to \$1836.00 was done without a Notice of Rent Increase. The landlord indicated his motivation to increase the rent was to motivate the tenant to vacate the rental unit. The landlord agreed to reimburse the tenant for the \$216.00 in additional monies he received for December 2022 through May 2023.

During the hearing, the landlord confirmed that his second oldest son, his son's wife and son's child still intend on moving into the rental unit.

The tenant submitted that they have been looking for new accommodation but rents are very unaffordable. The tenant submitted that they have also considered buying a home but they have not yet purchased one.

The tenant tried to raise issues with respect to a water leak and being owed money for excessive utility bills; however, I did not permit further submissions on that issue as it was not relevant to the application before me. The tenant may file his own Application for Dispute Resolution against the landlord if he wishes to pursue a monetary claim.

The tenant tried to raise issues with respect to the landlord's good faith intention in issuing the Two Month Notice; however, I did not permit further submissions on that issue since the time limit for disputing the Two Month Notice has passed.

I informed the parties orally during the hearing that I was satisfied the criteria for granting an Order of Possession to the landlord had been met and I heard submissions from the parties with respect to the effective date for the Order of Possession.

The tenant requested that they be permitted occupancy until the summer months so that their children may finish the school year and the family can relocate during the summer before the new school year begins.

The landlord was willing to grant the tenant occupancy until June 30, 2023 or July 1, 2023, pointing out that the tenant has had many months to find alternative accommodation.

Analysis

Section 55(2) of the Act provides that a landlord may seek an Order of Possession where:

(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;

In this case, it is undisputed that the landlord served the tenants with a Two Month Notice, in person, on August 14, 2022.

A tenant in receipt of a Two Month Notice has 15 days to file to dispute a Two Month Notice and if a tenant disputes the Two Month Notice the landlord bears the burden to prove the landlord has a good faith intention to end the tenancy for the reason stated on the Two Month Notice. Accordingly, the tenants had until August 29, 2022 to file an Application for Dispute Resolution to dispute the Two Moth Notice but they did not.

Under section 49(9) of the Act, where a tenant receives a Two Month Notice does not dispute the notice within the time limit for doing so, 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.

Upon everything before me, I am satisfied the landlord served the tenant with all four pages of a Two Month Notice that is in the approved form and it is duly signed and completed. The landlord confirmed during the hearing that his second oldest son intends to occupy the rental unit after the tenancy ends which is a permissible reason for ending a tenancy under section 49 of the Act. The tenant did not file to dispute the Two Month Notice within 15 days of receiving the Two Month Notice. Therefore, I find the tenant was conclusively presumed to have accepted that the tenancy would end on October 31, 2022.

I heard the landlord permitted the tenant to continue to occupy the rental unit in November 2022 and the tenant did not pay rent for the month of November 2022. Therefore, I find the tenant should have vacated the rental unit no later than November 30, 2022.

The tenant did not vacate by November 30, 2022 and the landlord filed an Application for Dispute Resolution requesting an Order of Possession. I find the criteria of section 55(2)(b) have been met and I find no reason to deny the landlord's request. Therefore, I grant the landlord's request for an Order of Possession and I award the landlord recovery of the \$100.00 filing fee paid for this application from the tenant.

During the hearing, I heard submissions from both parties with respect to an effective date for the Order of Possession. Under section 55(3) of the Act, I may grant an Order of Possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order. Accordingly, I am afforded some discretion in setting the effective date for an Order of Possession.

The tenant submitted that they have been looking for new living accommodation since August 15, 2022. If I were to grant the tenant's request for an Order of Possession in mid to late summer, the tenant would have the benefit of approximately one year to vacate the rental unit; yet, the Act requires the landlord to wait only two full months to regain possession of a rental unit after serving an undisputed Two Month Notice. I also note the tenant signed a document on October 28, 2022 agreeing that November 2022

would be his last month of occupancy but the tenant has exceeded that agreement by several months already. While I appreciate rents have increased significantly in recent years, the landlord has been waiting to regain possession of this unit for a very long time since the Two Month Notice was served and I am of the view that to make the landlord wait even longer would be unreasonable. Therefore, I grant the landlord's request for an Order of Possession effective July 1, 2023.

Having heard the tenant has already received compensation equivalent to one month's rent, which I attribute to compensation payable by a landlord under section 51(1) for having ended a tenancy by way of a Two Month Notice, the tenant remains obligated to pay rent for June 2023.

As discussed during the hearing, the landlord did not have a basis under the Act to increase the rent for December 2022 onwards and the tenant shall recover the overpayment in the amount of \$216.00 [\$36.00 x 6 months].

Given all of the above, I calculate the tenant is to pay the landlord rent of \$1684.00 for the month of June 2023 as follows:

Monthly rent per tenancy agreement	\$1800.00
Filing fee awarded to landlord	100.00
Less: rent overpaid by tenant	<u>(216.00)</u>
Net rent due for June 2023	\$1684.00

Conclusion

The landlord is provided an Order of Possession effective July 1, 2023.

The tenant is obligated to pay rent of \$1684.00 for the month of June 2023.

The tenant may make a monetary claim against the landlord for excessive utilities or any other damages or losses by making his own Application for Dispute Resolution.

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: May 30, 2023

Residential Tenancy Branch