



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

Both parties applied for dispute resolution under the *Residential Tenancy Act* (the Act).

The landlord applied for an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 20, 2013 (Two Month Notice) and to recover the filing fee. The tenant applied for more time to make an application to dispute the Two Month Notice and to recover the filing fee.

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service

Both parties confirmed service of the Proceeding Package and documentary evidence and that they had the opportunity to review same before the hearing.

Preliminary Matter

Both parties confirmed their respective email addresses during the hearing. As a result, this decision will be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Did the tenants apply too late for an extension of time?
- Is either party entitled to the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 18, 2022 and converted to a month-to-month tenancy after May 18, 2023. A security deposit of \$735 was paid by the tenants at the start of the tenancy. The tenants continue to occupy the rental unit.

The tenant confirmed being served with the Two Month Notice dated April 20, 2023, on April 21, 2023. The effective vacancy date on the Two Month Notice is listed as June 30, 2023. The tenant did not dispute the Two Month Notice until August 21, 2023, which was beyond the effective date of June 30, 2023. Page two of the Two Month Notice indicates the reason as:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="checked" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse

The tenants were advised that their application was dismissed without leave to reapply as they applied beyond the effective date of the Two Month Notice, which I will further address below.

The landlord testified that they have 7 people in their family and that they intend to fully use the basement for their family as they need more space.

The landlord claimed that to date, the tenants have not been provided compensation under the Act for having been served the Two Month Notice. Rent for November 2023 was confirmed as paid.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

- Is the landlord entitled to an order of possession under the Act?
- Did the tenants apply too late for an extension of time?

Section 66(3) prohibits the extension of the time limit to apply to dispute a Two Month Notice beyond the effective date of the Two Month Notice. As the effective date was June 30, 2023, and the tenant did not apply until August 21, 2023, I find I am barred at

law from doing so and as such, I dismiss the tenants' application in full, without leave to reapply.

I find that the landlord has provided sufficient evidence to support the Two Month Notice having 7 people living in the home and requiring more space. I also find the Two Month Notice complies with section 52 of the Act. Given the above, I find the Two Month Notice is valid.

Therefore, I uphold the Two Month Notice dated April 20, 2023. I find the tenancy ended on June 30, 2023, and that the tenants have been overholding since that date.

Under section 55, I must grant an order of possession. Therefore, I grant the landlord an order of possession effective **December 31, 2023 at 1:00 PM**. I have used this date as the landlord has not provided compensation yet to the tenants and I find that no rent is due for December 2023 as the month of compensation under the Act for the landlord having served the Two Month Notice.

- Is either party entitled to the filing fee?

As the tenant application was dismissed, I decline to grant the tenant the filing fee. As the landlord was successful, I authorize the landlord to deduct \$100 from the tenants' security deposit of \$735 for the \$100 filing fee under sections 62(3) and 72 of the Act. I find the security deposit is now \$635 as a result.

Conclusion

The tenants' application is dismissed in its entirety.

The landlord application is successful.

The tenancy ended on June 30, 2023. The order of possession must be served on the tenants and is effective December 31, 2023 at 1:00 PM. Should the tenants refuse to vacate by that date and time, the landlord may enforce the order of possession in the Supreme Court.

I caution the tenants that they can be liable for all enforcement costs including court and bailiff fees if they fail to vacate on December 31, 2023 at 1:00 PM.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenants as required.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 24, 2023

Residential Tenancy Branch