

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 pursuant to section 55 because the landlord wants the rental unit for another use; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord sent a copy of her dispute resolution hearing package to the tenant on August 2, 2011 by registered mail. The tenant's agent (the tenant) confirmed receiving this package by registered mail.

Preliminary Issue – Service of Landlord's 2 Month Notice to End Tenancy

The tenant entered into written evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property signed by the landlord's agent on March 30, 2011 (the 2 Month Notice of March 30, 2011). The tenant also entered into written evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 29, 2011 (the second 2 Month Notice) and signed by both the landlord's agent and the landlord.

The landlord did not submit any written evidence other than her application for dispute resolution. In that application, the landlord stated that the 2 Month Notice that formed the basis for the application was handed to the tenant on May 31st, 2011. The applicant had scratched out April 29, 2011 and replaced this date with May 31st, 2011 on the application for dispute resolution. She did not complete the "Details of the Dispute" section of the application for dispute resolution.

The tenant entered written evidence that she did not receive the landlord's 2 Month Notice on May 31, 2011 and, in fact, was not aware of the landlord's intention to pursue an end to this tenancy until she received a copy of the landlord's application for dispute resolution citing the May 31, 2011 delivery of the 2 Month Notice on August 5, 2011. The tenant also submitted written evidence that her aunt picked her up at her home on May 30, 2011 and drove her to her mother's residence where she ate dinner with them and stayed overnight. She stated that she could not have been delivered the landlord's 2 Month Notice on May 31, 2011 because she did not return home on that date.

At the commencement of the hearing, the landlord testified that she incorrectly identified May 31, 2011 as the date when she handed a 2 Month Notice to End Tenancy for Landlord's Use of Property to the tenant. She said this was actually handed to the tenant on March 31, 2011.

In her written evidence, the tenant noted that in the 2 Month Notice of March 30, 2011, the landlord did not provide an address where the tenant could serve documents to the landlord. The tenant also noted that the dispute address for the rental unit was identified as a totally different property and not any location where she resided. The tenant stated that she told the landlord's agent at that time that she did not consider herself as having been provided a properly completed 2 Month Notice in March 2011 and suggested that the landlord serve a proper notice with the deficiencies corrected. The tenant also entered written evidence that she had applied for dispute resolution to contest the landlord's second 2 Month Notice within the time frame for doing so and a dispute resolution hearing was scheduled for May 31, 2011 (Residential Tenancy Branch File No. 772665).

The tenant entered written evidence that the landlord's agent gave verbal notice that the landlord was discontinuing her action to obtain an end to this tenancy on the basis of the second 2 Month Notice on May 10, 2011. The landlord's agent subsequently signed a May 12, 2011 letter on the landlord's behalf confirming that he had been empowered by the landlord to act as her Agent and that he had been instructed by the landlord to withdraw the '2 Month Notice to End Tenancy for Landlord's Use of Property' on the two RTB-32 forms dated March 30th, 2011 and April 29th, 2011. He confirmed that this tenancy will continue in that letter. The tenant contacted the Residential Tenancy Branch to cancel her application when she received this written confirmation from the landlord's agent that the landlord was no longer seeking to enforce the 2 Month Notices to end her tenancy.

The landlord confirmed that her agent did represent her in interactions with the tenant. She testified that her agent's command of the English language is not strong and that he did not correctly convey her intentions to the tenant. She said that she told her agent that she was thinking of discontinuing the efforts to end this tenancy, but she did not instruct him to withdraw the notices.

Issues(s) to be Decided

Was the landlord's 2 Month Notice to End Tenancy of March 30, 2011 served in accordance with the Act? Was the tenant properly informed of the landlord's application for dispute resolution? Is the landlord entitled to an Order of Possession because the

landlord wants the rental unit for another use? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties said that this periodic tenancy commenced about 2 ½ to 3 years ago. Monthly rent is set at \$820.00, payable in advance on the first of each month. The landlord continues to hold a \$397.50 or \$400.00 security deposit.

The tenant submitted a 41 page submission, much of which was directed at issues that arose because the landlord did not take proper care in issuing the 2 Month Notices or the landlord's application for dispute resolution. The landlord did not submit anything in writing other than her application for dispute resolution, which as noted above was completed incorrectly. The landlord did not complete any of the Details of the Dispute in the application for dispute resolution.

The landlord also maintained at the hearing that she has posted another 2 Month Notice on the tenant's door on July 31, 2011, which the tenant also denies having received.

Analysis

Although the landlord's agent identified the tenant and her service address on the 2 Month Notice of March 30, 2011, no service address was identified on that Notice for the location where the landlord could serve documents, nor was the correct address for the rental unit identified in that 2 Month Notice. Since the landlord's agent subsequently withdrew both of the 2 Month Notices issued on March 30, 2011 and on April 29, 2011, I find that the tenant raised legitimate concerns that the landlord did not serve her with a third 2 Month Notice on May 31, 2011 as the landlord indicated on her application for dispute resolution.

Based on the considerable errors in the landlord's March 30, 2011 2 Month Notice, the landlord's agent's withdrawal of the two 2 Month Notices and the incorrect information on the landlord's application for dispute resolution, I find that the landlord's 2 Month Notices to end this tenancy issued on March 30, 2011 and April 29, 2011 are of no force. I dismiss the landlord's application for dispute resolution and cancel both the March 30, 2011 and April 29, 2011 2 Month Notices to End Tenancy for Landlord's Use of Property.

If the landlord wishes to issue a 2 Month Notice to the tenant, I strongly recommended at the hearing that the landlord do so by way of registered mail so as to ensure that the ongoing issues of service of these documents are resolved. Since the tenant denies having received a third 2 Month Notice to End Tenancy and to avoid future problems if

the landlord tries to enforce that Notice, I strongly encourage the landlord to issue a new 2 Month Notice to the tenant by registered mail if she remains interested in obtaining an end to this tenancy for Landlord's Use of the property.

Conclusion

I dismiss the landlord's application for an end to this tenancy and an Order of Possession with the effect that this tenancy continues. The landlord bears the costs of filing her application.

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*.