



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on an undisputed Notice to End Tenancy for Landlord's Use of Property and an order to recover the filing fee for the Application.

Only the Landlord and her legal counsel, M.J.S., appeared at the hearing. The Landlord, through M.J.S., was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

M.J.S. submitted that he served the Tenant with the Notice of Hearing and the Landlord's Application for Dispute Resolution on August 1, 2014 by registered mail. Under the Act documents served this way are deemed served 5 days later; accordingly, I find the Tenant was duly served as of August 6, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

The Landlord served the Tenant with the Ministry of Public Safety and Solicitor General (as it then was) form # 03158-3 (12/2003), Notice to End Tenancy – Residential Unit (the "2003 Form"). The current form is the Residential Tenancy Branch Office of Housing and Construction Standards form #RTB-32 (2011/03), 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Current Form"). As the Landlord used an outdated form, it was necessary to compare the two forms to ensure the Tenant, once served with the 2003 Form, was aware of her rights and responsibilities under the Act.

Section 52 of the Act provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by the landlord, be in the approved form.

(Emphasis added)

When considering whether the 2003 Form continues to be an “approved form” pursuant to section 52, it is necessary to consider the essential information contained in that form, in comparison to what is contained in the Current form. I find the following information to be essential:

- name of the tenant
- tenant's service address
- name of the landlord
- landlord's service address
- address of rental unit to be vacated
- effective date of notice
- reasons for the notice
- deadlines for the tenant's right to dispute the notice
- reference to the correct section of the Act.

In the 2003 Form, the name and service address of the tenant, as well as that of the Landlord's, was clearly noted. The address of the rental unit was consistent with that of the tenancy agreement. The effective date of the Notice as well as the reasons for the notice were also clearly indicated on the 2003 Form. Finally, the Tenant was alerted to section 49 of the Act, and the Tenant's obligation to file a dispute within 15 days. While it is preferable for parties to disputes to utilize up to date Forms, all essential information was included in this case and accordingly I find the 2003 Form to be an approved form.

The Notice indicated July 15, 2014 as the effective date of the Notice. Section 53 of the Act provides that incorrect effective dates automatically change and accordingly I find the effective date of the Notice to be July 31, 2014.

Issues to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

Submitted in evidence was a Proof of Service Notice to End Tenancy, dated July 31, 2014, and which confirms that on May 4, 2014 the Tenant was served the Notice by handing to an adult person, T.T. The reason for the Notice was the Landlord's use of the property.

The Notice explains the Tenant had 15 days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

Nevertheless, the Tenant did not dispute the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an Order of Possession effective **July 31, October 6, 2014**, the ~~corrected effective date~~ of this my decision. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$50.00 comprised of the \$50.00 fee paid by the Landlord for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession and is granted a monetary order for the filing fee.

This decision is final and binding on the parties, except as 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: October 06, 2014

Corrected: December 19, 2014

Residential Tenancy Branch

