



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession based upon a 2 Month Notice to End Tenancy for Landlord's Use. Both parties appeared and had an opportunity to be heard. The tenant called from the hospital where he has been a patient for several weeks.

Issue(s) to be Decided

Is the landlord entitled to an order of possession and, if so, on what terms?

Background and Evidence

The rental unit is a furnished bedroom in a house. The tenant shares a bathroom and the kitchen with the other occupants of the house. The landlord does not live in the house.

In 2010 the landlord was renting the house in which the rental unit is located to P. Starting October 6, 2010, P, with the landlord's knowledge and consent, entered into a sub-tenancy with the tenant. The tenant's monthly rent of \$400 included all utilities.

P's tenancy ended September 30, 2012 and M rented the house. M, again with the knowledge and consent of the landlord, continued the sub-tenancy arrangement. On October 1, 2012 M and the tenant signed a tenancy agreement. The rent remained \$400.00 a month but telephone and cable were no longer included.

M did not want to deal with cheques from the tenant so at her request the tenant paid his rent directly to the landlord. M paid her rent, less \$400.00, to the landlord.

M's tenancy ended January 31, 2015.

On January 27, 2015 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use. The landlord testified that her son and his family intend to

move into the house. Since January 31 the house, except for the rental unit, has not been rented to anyone.

The tenant filed an application to the Residential Tenancy Branch disputing the notice. The hearing was on February 13, 2015. No one appeared at the hearing and the tenant's application was dismissed with leave to re-apply. The landlord testified that she did not appear because the tenant told her he was going to move. When he did not she filed this application for dispute resolution on April 7. The tenant testified that he did not attend the hearing because he was too sick.

The tenant paid the March and April rent in one payment of \$800.00. The landlord testified that she gave the tenant a receipt for the payment that indicated it was for use and occupancy only and did not reinstate the tenancy.

The tenant testified that he is 63 years old, has health difficulties, and is prepared to move but needs more time. The landlord testified that the tenant has five daughters. Two of them were with the tenant when she served her application for dispute resolution on him. The daughters told the landlord they would help their father move. The landlord also testified that she has given the tenant lots of time; he only has personal possessions to move, and it appears that there other people and a big dog staying in the house.

The tenant had not paid the May rent. He said he had been unable to deliver his cheque to the landlord because he was in the hospital.

Analysis

The *Residential Tenancy Act* does not apply to sub-tenants however, this tenancy ceased to be a sub-tenancy when M moved out and the landlord allowed the tenant to stay.

Section 49(8) allows a tenant who has been served with a 2 Month Notice to End Tenancy for Landlord's Use to dispute it by filing an application for dispute resolution within 15 days of receipt of the notice. Subsection 9 provides that if a tenant who has received a notice does not dispute it he or she is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Although the tenant did file an application disputing the notice he has not pursued his claim. Even if the tenant was too sick to attend the hearing on February 13 he could have applied for a new hearing. He never did.

I accept the landlord's evidence that her son's family intend to live in this house and accordingly, I find that the 2 Month Notice to End Tenancy for Landlord's Use is valid. The landlord is entitled to an order of possession.

As of the date of the hearing the tenant had not paid the May rent. As a result the order of possession will be effective two days after it is served on the tenant. However, if since the date of the hearing the tenant has paid the May rent in full the landlord will not be able to enforce her order of possession until May 31, 2015.

As the landlord was successful on her application she is entitled to reimbursement from the tenant of the \$50.00 fee she paid to file it. An order pursuant to section 67 in that amount is granted to the landlord.

Conclusion

- a. An order of possession has been granted to the landlord. If necessary, the order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order has been granted to the landlord. If necessary, the order may be filed in the Small Claims Court and enforced as an order of that court.

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 20, 2015

Residential Tenancy Branch

