



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL

Introduction

On November 16, 2017, the Landlord submitted an Application for Dispute Resolution requesting an order of possession based on issuance of a 2 Month Notice to End Tenancy for Landlord Use of Property ("the Two Month Notice").

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

Issue to be Decided

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on May 1, 2005, as a month to month tenancy. Rent in the amount of \$970.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$425.00.

The Landlord issued the Tenant a 2 Month Notice dated August 5, 2017. The reason for ending the tenancy in the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

The Landlord provided a copy of the 2 Month Notice. The effective date on the 2 Month Notice is October 31, 2017.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date set out on page 1 of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

The Landlord testified that she will be using the rental unit for her own personal use.

The Landlord testified that the Tenant failed to move out of the rental unit on the effective date of the 2 Month Notice and has failed to pay the rent for the past four months.

The Landlord seeks an immediate order of possession for the rental unit.

The Tenant testified that she received the 2 Month Notice on August 5, 2017. The Tenant did not dispute the 2 Month Notice by making an application for dispute resolution.

The Tenant submitted that she is still living in the rental unit because she has not been able to find housing. She submitted that her privacy has been violated due to secretly installed audio and video devices, and strange noises and occurrences in the unit. She submitted that her light bulbs are flickering and exploding. The Tenant submitted that this activity in the unit has caused her to be disoriented and has affected her ability to find housing.

Analysis

Pursuant to section 49 (6) of the Act, if a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

Under section 55 (2)(b) of the Act, if the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

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

The Tenant received the 2 Month Notice on August 5, 2017, and did not dispute the Notice within 15 days. Pursuant to section 49 (6) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The tenancy has ended.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant authority to the Landlord to withhold \$100.00 from the Tenant's security deposit for the application fee.

Conclusion

The Landlord's request for an order of possession for the rental unit based on the issuance of the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated August 5, 2017, is granted.

The Tenant received the 2 Month Notice and did not dispute the Notice or move out on the effective date of the Notice.

I grant the Landlord an order of possession effective two (2) days after service on the Tenant. The Tenant must be served with the order of possession.

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: January 26, 2018

Residential Tenancy Branch