



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the landlords for an order of possession based on a mutual agreement to end the tenancy and to recover the cost of the filing fee.

The landlords attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were served in person on October 17, 2019, at 3:30pm.

I find that the tenant has been duly served in accordance with the Act.

Issue to be Decided

Are the landlords entitled to an order of possession?

Background and Evidence

The landlord testified that they entered into a mutual agreement with the tenant that the tenancy would end on August 31, 2018. The landlord stated that the tenant told them that they were having difficulties finding a new residence and if they could stay an extra month. The landlord stated that the tenant keeps making promises to move; however, they continue to come up with reasons not to leave. The landlord stated that they have only accepted occupancy rent as they were not reinstating the tenancy.

Filed in evidence are text messages between the parties, which shows the tenant continues to make excuses for not leaving. Filed in evidence are text messages and receipts showing rent was accepted as occupancy rent.

Analysis

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

I accept the evidence of the landlord that the parties entered into a mutual agreement to end the tenancy on August 31, 2018. This is supported by a copy of the mutual agreement filed in evidence. I find the tenancy legally ended on August 31, 2018.

In this case, the landlords have accepted occupancy rent since the tenancy has legally ended. This was only to give the tenant additional time to vacated; however, the tenant is taking advantage of the situation as they continuously have an excuse not to vacate the premise. This is supported by the text messages.

I find the landlords are entitled to an order of possession, effective no later than **two (2) days** after service on the tenant. This Order may be enforced in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As the landlords have been successful with their application, I authorize the landlord to keep \$100.00 from the tenant's security deposit to recover the cost of the filing fee from the tenant.

Conclusion

The landlords are granted an 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: November 14, 2019

Residential Tenancy Branch