



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act). The landlord applied for an order of possession for the rental unit due to a One Month Notice to End Tenancy for Cause (Notice) and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that he served the tenants with his Application for Dispute Resolution and Notice of Hearing by registered mail, separately. The landlord provided the copies of the Canada Post Customer Receipt containing the Tracking Numbers to confirm this mailing. These numbers are located on the style of cause page in this Decision.

Based upon the submissions of the landlord, I accept the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

The landlord was affirmed and provided the opportunity to present his evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit and to recovery of his filing fee paid for this application?

Background and Evidence

The landlord submitted evidence that the tenants, who began their tenancy on July 10, 2019, were served the Notice, dated November 6, 2019, by attaching it to the tenants' door on that date, listing an effective end of tenancy date of December 31, 2019.

The cause listed on the Notice alleged that the tenants were repeatedly late in paying their monthly rent. The landlord said that the tenants paid the September, October, and November 2019, monthly rent late.

The landlord said that since the Notice was issued, he and the tenants have signed a Mutual Agreement to End Tenancy, which states that the tenants have agreed to move-out of the rental unit on March 30, 2020. The landlord submitted a copy of the Mutual Agreement, which is on the standard RTB form.

Despite the Mutual Agreement, the landlord said that he would still like an order of possession of the rental unit in the event the tenants fail to vacate.

I have no evidence before me that the tenants have filed an application in dispute of the Notice.

Analysis

I have reviewed all the evidence and accept that the tenants were served with the Notice as declared by the landlord. Absent evidence to the contrary, the Notice was deemed received by the tenants three (3) days after the Notice was served by attaching it to the tenants' door on November 6, 2019, pursuant to section 90 of the Act. I also find no evidence that the tenants applied to dispute the Notice.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the 1 Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

As such, I therefore find the tenants are conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and that the landlord is entitled to an order of possession for the rental unit.

Although the parties have agreed to mutually end this tenancy on March 30, 2020, I find it is appropriate in these circumstances to award the landlord an order of possession of the rental unit, effective the date listed on the Mutual Agreement to End Tenancy, pursuant to sections 44(1)(c) and 55(1)(a) of the Act.

If the tenants fail to vacate the rental unit pursuant to their Mutual Agreement to End Tenancy, the landlord may serve the order of possession on the tenants for enforcement as an order of that Court. The tenants are advised that costs of enforcement, such as bailiff fees, are recoverable from the tenants.

The landlord waived his right to recovery of the filing fee.

Conclusion

The landlord's application for an order of possession of the rental unit is granted, with an effective date of March 30, 2020.

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 21, 2020

Residential Tenancy Branch