



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL (Landlord W.W.)
 FFL, OPL, MNDCL-S (Landlords S.T. and A.T.)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the Landlords.

Landlord W.W. filed the application September 30, 2020 ("Landlord W.W.'s Application"). Landlord W.W. sought an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") and to recover the filing fee.

Landlords S.T. and A.T. filed the application October 09, 2020 ("Landlord S.T. and A.T.'s Application"). Landlords S.T. and A.T. sought an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property, compensation for monetary loss or other money owed, to keep the security and pet damage deposits and to recover the filing fee.

Landlord W.W. appeared at the hearing. Landlord W.W. confirmed she was not appearing for Landlords S.T. or A.T.

The Tenant appeared at the hearing with the Co-tenant. Both parties agreed the Co-tenant was a co-tenant under the tenancy agreement.

Landlord W.W. withdrew the request for an Order of Possession because the Tenant and Co-tenant (the "Tenants") had vacated the rental unit. Landlord W.W. said she was told the Tenants vacated November 15, 2020. The Tenants advised that they vacated November 14, 2020.

Landlord W.W. continued to seek recovery of the filing fee.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Landlord W.W. submitted evidence prior to the hearing. The Tenant had not submitted evidence on Landlord W.W.'s Application. The Tenant confirmed receipt of the hearing package and evidence for Landlord W.W.'s Application.

The hearing proceeded for 45 minutes. Nobody called into the hearing for Landlords S.T. or A.T. during this time.

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given Landlords S.T. and A.T. did not attend the hearing to provide a basis for, or present evidence on, their application, and the Tenant did attend the hearing to address the issues raised in the applications, I dismiss Landlord S.T. and A.T.'s Application without leave to re-apply.

I note that Landlords S.T. and A.T. sought to keep security and pet damage deposits in their application. Although the deposits would usually have been dealt with pursuant to Policy Guideline 17, I decline to deal with them for two reasons.

First, the Tenant advised that she has not provided any of the Landlords with a forwarding address in writing. As explained to the parties during the hearing, section 38 of the *Residential Tenancy Act* (the "Act") in relation to the return of security and pet damage deposits is not triggered until the Tenant provides a forwarding address in writing.

Second, Landlord W.W. advised that she still holds the security and pet damage deposits and that these were not transferred to the new landlords, Landlords S.T. and A.T. However, the security and pet damage deposits are not raised as an issue on Landlord W.W.'s Application and are only raised on Landlord S.T. and A.T.'s Application. Therefore, I did not find it appropriate to determine the security and pet damage deposit issue on Landlord S.T. and A.T.'s Application.

In the circumstances, if the Tenant wants the security and pet damage deposits returned, the Tenant must provide Landlord W.W. with a forwarding address in writing as required by sections 38 and 39 of the *Act*.

I heard the parties on Landlord W.W.'s request to recover the filing fee. The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is Landlord W.W. entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started October 15, 2018 and was a "periodic tenancy commencing...October 15, 2018 and continuing on a year-to-year basis". Rent was due on or before the first day of each month. The parties agreed the addendum in evidence is accurate. The addendum addresses the term of the lease.

The Notice was submitted. It was dated July 25, 2020 with an effective date of September 30, 2020. The grounds for the Notice were that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Landlord W.W. testified as follows. She is entitled to the filing fee because the Tenants were given verbal notice before July 15, 2020 about the sale of the rental unit and requirement for vacant possession. The Tenants were served with the Notice in July. The Tenants did not dispute the Notice. The Tenants received the full application.

The Tenants testified as follows. Yes Landlord W.W. gave them the Notice and they told her it was not enough time to vacate. Landlord W.W. gave the new landlords, Landlords S.T. and A.T., permission to enter the rental unit and remove the Tenants' belongings. The Landlords threw the Tenants' belongings away. The rental unit remained in the Tenants' possession until this hearing. The Tenants received the Notice July 25, 2020.

Landlord W.W. denied that she gave the new landlords permission to enter the rental unit and throw the Tenants' belongings away.

Analysis

The filing fee is awarded when parties are successful on their application. Here, Landlord W.W. withdrew the request for an Order of Possession because the Tenants had vacated the rental unit in November. I have considered whether it was reasonable for Landlord W.W. to file the application.

The Notice was issued pursuant to section 49(5) of the *Act*. The Tenants had 15 days to dispute the Notice pursuant to section 49(8)(a) of the *Act*. I am satisfied the Tenants did not dispute the Notice. Therefore, section 49(9) of the *Act* applied which states:

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 55(2)(b) of the *Act* states:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution...

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Pursuant to section 49(9) of the *Act*, the Tenants were conclusively presumed to have accepted that the tenancy ended September 30, 2020, the effective date of the Notice. The Tenants were required to vacate the rental unit by September 30, 2020. The Tenants were not entitled to remain in the rental unit past September 30, 2020 and wait for this hearing as this hearing was the Landlords' request for an Order of Possession, not the Tenants' dispute of the Notice.

Landlord W.W. filed the application September 30, 2020, the effective date of the Notice. The Tenants had not vacated by September 30, 2020 as the Tenants did not vacate until November. Therefore, I am satisfied it was reasonable for Landlord W.W. to file the application and I award Landlord W.W. reimbursement of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

I do not find the issue involving the Tenants' belongings relevant to the narrow issue before me, which is whether it was reasonable for Landlord W.W. to apply for an Order of Possession based on the Notice on September 30, 2020. If the Tenants feel that they are entitled to compensation for what occurred at the end of this tenancy, it is open to them to file an Application for Dispute Resolution seeking compensation. However, this does not change that the Tenants failed to vacate the rental unit as required and therefore it was reasonable for Landlord W.W. to seek an Order of Possession.

Landlord W.W. is issued a Monetary Order for \$100.00.

Conclusion

Landlord W.W. is issued a Monetary Order for \$100.00 as reimbursement for the filing fee. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: December 07, 2020

Residential Tenancy Branch