



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

On April 24, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession based on the issuance of a 1 Month Notice To End Tenancy For Cause. 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 parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. I heard testimony on the issues from both parties; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant submitted three pages of documents by fax after the hearing had concluded. These documents were submitted late and will not be considered in this Decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession for cause?

Background and Evidence

The parties testified that the tenancy began approximately 15 years ago; however, the Landlord purchased the property in August 2013. Rent in the amount of \$400.00 is to be paid on the first day of each month.

The Landlord issued a 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") by posting it on the Tenant's door on March 2, 2017. The Landlord provided a photograph of the Notice posted to the door. The reason for ending the tenancy checked off by the Landlord within the Notice is:

*Tenant has allowed an unreasonable number of occupants in the unit /site
Tenant or a person permitted on the property by the Tenant has:*

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*

Tenant has engaged in illegal activity that has, or is likely to:

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*
- *Jeopardize a lawful right or interest of another occupant or the Landlord*

Tenant has assigned or sublet the rental unit/ site without the Landlord's written consent

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page 1 of the Notice. The photograph of the 1 Month Notice posted to the door shows an effective date of April 5, 2015.

There is no evidence before me that that the Tenant made an application to dispute the 1 Month Notice.

The Landlord seeks an order of possession.

In response to the Landlord's submissions, the Tenant submitted that he has been out of the province visiting a sick parent and then got sick himself. He submitted that he was out of the province on March 2, 2017, when the 1 Month Notice was issued.

The Tenant provided documents showing he was out of the province from March until May 2017. A letter dated April 15, 2017 indicates the Tenant was unable to travel until April 30, 2017.

The Tenant submitted that he received the 1 Month Notice on May 13, 2017, when he returned home. He submitted that he did not dispute the 1 Month Notice once he received it on May 13, 2017.

The Tenant submitted that he had a female friend staying at his place while he was away. He submitted that she was staying there to look after the place for safety and security reasons.

The Tenant's female friend, Ms. L.A. submitted that she has been living there looking after the Tenant's place since October 2016. She testified that she has had countless

encounters with the Landlord. She testified that the Landlords wanted her to accept an eviction notice but she said no. She testified that the 1 Month Notice that was posted on the door on March 2, 2017.

The Tenant submitted that he was unable to be reached by telephone.

The Landlord submitted that he was not aware that the Tenant was out of town until the Tenant's friend informed him. He submitted that the Tenant had a female friend staying in the rental unit since November 2016, and the Tenant's friend has been causing disturbances on the property.

Analysis

Section 88 of the Act speaks to how documents are to be given or served.

All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*

Section 90 of the Act states that a document given or served by attaching a copy to a door or other place is deemed to be received on the 3rd day after it is attached.

Section 47 of the Act speaks to a Tenant's rights when receiving a 1 Month Notice to End tenancy :

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.*

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

The 1 Month Notice To End Tenancy For Cause dated March 2, 2017, was posted to the Tenant's door on March 2, 2017 and pursuant to section 90 of the Act, it was deemed received on March 5, 2017.

In addition to the deemed service of the Notice, the Tenant had an adult person residing in the unit for safety and security reasons. I find that Ms. L.A. received the 1 Month Notice that was posted to the Tenant's door on March 2, 2017.

I find that the Tenant permitted Ms. L.A. to be responsible for the rental unit while he was away. I find that when Ms. L.A. received the 1 Month Notice she had a responsibility to notify the Tenant.

I find that the Tenant is responsible to understand his rights and responsibilities under the Act. The Tenant is expected to comply with the Act and is also responsible for the actions of a guest residing in the unit. I find it is not reasonable for a Tenant to go out of province for six months, and not bear this responsibility.

I do not accept the testimony that the Tenant's guest was not able to contact the Tenant to inform him of the Notice. It makes no sense that the person left responsible for the rental unit would have no means to contact the Tenant.

Even if I accept that the Tenant received the 1 month Notice on March 13, 2017, I find that he took no action within 10 days to dispute the Notice.

I find that the Tenant received the 1 Month Notice and did not apply to dispute the Notice within the required timeframe, and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ends on the effective date of the Notice.

Pursuant to section 53 of the Act, the effective date of the Notice automatically corrects to be May 31, 2017.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective no later than 1:00 pm on May 31, 2017, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

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 authorize the Landlord to keep \$100.00 from the Tenants security deposit in satisfaction of the filing fee.

Conclusion

The Tenant received the 1 Month Notice To End Tenancy For Cause dated March 2, 2017, and did not apply to dispute the 1 Month Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective no later than 1:00 pm on May 31, 2017, after service on the Tenant, and I order that the Landlord can keep \$100.00 from the Tenant's security deposit to pay for the Landlord's filing fee.

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 31, 2017

Residential Tenancy Branch