



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause.

The landlord attended the hearing with a witness, both of whom gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) on January 2, 2018 by posting it to the door of the rental unit. The Hearing Package was provided to the landlord by the Residential Tenancy Branch on December 21, 2017, however the landlord and spouse were away over the holiday season until January 2, 2018, and did not receive the Hearing Package to serve on the tenant until they returned. The landlord called the Residential Tenancy Branch who advised the landlord to serve the Hearing Package immediately, and the landlord did so.

The *Residential Tenancy Act* requires a party who makes an Application for Dispute Resolution to serve the respondent within 3 days of the Hearing Package being made available by the Residential Tenancy Branch. In this case, I accept the undisputed testimony of the landlord that the Hearing Package was served immediately upon receipt, and not within 3 days, through no fault of the landlord. I also find that since the landlord has not applied for any other relief, and the Hearing Package is deemed to be received by the tenant 3 days after posting it to the door (January 5, 2018), I am satisfied that the tenant has had 47 days notice of this hearing. Pursuant to my authority under Section 59 (3) of the *Residential Tenancy Act*, I order that the time for serving the Hearing Package is extended and has been served.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's witness is the landlord's spouse testified that this month-to-month tenancy began on October 20, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which is still held in trust by the landlord, and no pet damage deposit was collected. There is no written tenancy agreement. The rental unit is a 1 bedroom suite in a motel.

The landlord's witness further testified that on December 4, 2017 the tenant was served with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit, and the witness was present with the landlord and another person when it was posted. A copy has been provided as evidence for this hearing and it is dated December 4, 2017 and contains an effective date of vacancy of January 31, 2018. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant.

The tenant has not vacated the rental unit and has not served the landlord with an Application for Dispute Resolution disputing the notice.

The landlord's witness also testified that the landlord had cause to issue the notice, and that the tenant has been disruptive for others in the complex. The landlord seeks an Order of Possession.

Analysis

The *Residential Tenancy Act* states that once served, or deemed served with a One Month Notice to End Tenancy for Cause the tenant has 10 days to dispute it by filing and serving the landlord with an Application for Dispute Resolution. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date contained in that notice.

In this case, I accept the undisputed testimony of the landlord's witness that the tenant was served with the notice on December 4, 2017 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or December 7, 2017. The landlord's witness testified that the landlord has not been served with an Application for Dispute Resolution disputing the notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: February 21, 2018

Residential Tenancy Branch