



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC

Introduction

This hearing was convened by way of conference call. The Landlord had filed an Application for Dispute Resolution on March 14, 2018 (the "Application"). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated April 2, 2018 (the "Notice"). The Landlord sought reimbursement for the filing fee.

This matter originally came before me on May 29, 2018. The matter was adjourned and an Interim Decision was issued on June 6, 2018. This decision should be read in conjunction with the Interim Decision.

At this hearing, Witness 1 and Witness 2 appeared on behalf of the Landlord. The Landlord did not appear. The Tenant did not appear.

The Landlord had submitted evidence prior to the first hearing date. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence in my Interim Decision. I did not address service at this hearing date as the Residential Tenancy Branch mailed the Notice of Hearing for this date to the Tenant at the rental unit.

I proceeded with the hearing in the absence of the Tenant. I explained the hearing process to the witnesses and neither had questions when asked. The witnesses provided affirmed testimony. Witness 1 was not present while Witness 2 testified and Witness 2 was not present while Witness 1 testified.

The witnesses were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the witnesses. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

At the first hearing date, the Landlord provided affirmed testimony regarding the tenancy agreement as follows. There is an oral tenancy agreement between her and the Tenant regarding the rental unit. The tenancy started approximately fifteen years ago. It is a month-to-month tenancy. Rent is \$650.00 per month due on the first of each month. No security deposit was paid.

The Landlord had submitted a copy of the Notice. It is addressed to the Tenant. It relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of April 2, 2018. The grounds for the Notice are as follows:

1. Tenant has allowed an unreasonable number of occupants in the unit.
2. 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 and put the landlord's property at significant risk.
3. 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.
4. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.

The postal code for the rental unit is missing on the Notice. Witness 2 asked that the Notice be amended to include the postal code. I also note the date of the Notice is April 2, 2018; however, the witnesses testified it was served March 2, 2018. Both witnesses testified that the copy of the Notice served on the Tenant included the March 2, 2018 date noted in the service section of the Notice.

Both witnesses testified as follows. The Notice was taped to the door of the rental unit by Witness 1 and Witness 2 on March 2, 2018.

The Landlord had submitted a Proof of Service signed by the witnesses stating the Notice was taped to the door of the rental unit by the Landlord. I asked the witnesses about this. Witness 2 testified that the Landlord thought her name had to be indicated as the person serving the Notice because she is the Landlord and so the Proof of Service was completed showing the Landlord served the Notice when in fact the witnesses did. Witness 1 provided the same explanation.

Neither witness was aware of the Tenant disputing the Notice. Both testified that they would have been aware if the Tenant disputed the Notice as they have been assisting the Landlord throughout the process.

Both witnesses testified that the Tenant has not paid rent for at least a year and therefore has not paid rent since the Notice was issued.

Analysis

The Landlord was permitted to serve a notice to end tenancy on the Tenant pursuant to section 47 of the *Residential Tenancy Act* (the "*Act*") based on the grounds listed in the Notice.

I accept the undisputed testimony of the witnesses regarding service of the Notice and find the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant was deemed to have received the Notice March 5, 2018.

Section 68 of the *Act* allows me to amend the Notice if the Tenant "knew, or should have known, the information that was omitted" and it is reasonable to do so in the circumstances. I find the Tenant should have known the postal code for the rental unit. Further, I find it reasonable to amend the Notice as the Tenant could not have been misled or prejudiced in any way by the missing postal code.

Upon a review of the Notice, and considering the amendment, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*. I do not find that the incorrect date on the Notice invalidates it as the correct date of the Notice is in the service section directly below the incorrect date.

The Tenant had 10 days from receiving the Notice on March 5, 2018 to dispute it under section 47(4) of the *Act*. I accept the undisputed testimony of both witnesses that the Tenant did not dispute the Notice. I have no evidence before me that he did.

Therefore, pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended April 30, 2018, the corrected effective date of the Notice. The Tenant was required to vacate the rental unit by April 30, 2018.

I note that it is not necessary for me to determine whether the Landlord in fact had grounds to issue the Notice in these circumstances as the Tenant failed to dispute the Notice and therefore the conclusive presumption in section 47(5) of the *Act* applies.

I find the Landlord is entitled to an Order of Possession. I grant the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55 of the *Act*.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the Act. I grant the Landlord a Monetary Order in the amount of \$100.00.

Conclusion

The Landlord is granted an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is granted a Monetary Order in the amount of \$100.00. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Small Claims division of the Provincial Court 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: July 30, 2018

Residential Tenancy Branch