



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 in response to an Application for Dispute Resolution filed by the Landlord on August 16, 2018 (the "Application"). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated July 31, 2018 (the "Notice").

The Landlord appeared at the hearing. Nobody appeared for the Tenants. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that he gave two packages containing the hearing packages to Tenant 1 at the rental unit on August 24, 2018. He said the packages were for both Tenants.

The Landlord testified that Tenant 2 no longer lives at the rental unit. He said Tenant 2 is the mother of Tenant 1. He said Tenant 2 called him and told him she was moving but did not provide a forwarding address. He testified that Tenant 2 still comes and goes from the rental unit and that she only advised him over the phone that she was moving.

The Landlord submitted a signed letter from a witness stating he went with the Landlord to deliver two packages at the rental unit on August 24, 2018.

The Landlord could not recall if his evidence was served on the Tenants.

I accept the undisputed testimony of the Landlord and find it is supported by the signed letter from the witness. I find the Tenants were served with the hearing package in accordance with sections 89(2)(a) and 89(2)(c) of the *Residential Tenancy Act* (the “*Act*”). I also find the hearing packages were served in sufficient time to allow the Tenants to prepare for, and appear at, the hearing.

I acknowledge that Tenant 2 has verbally told the Landlord she moved. However, this is not sufficient to end the tenancy under the *Act*. Therefore, I find the rental unit continues to be Tenant 2’s residence and that the Landlord left the hearing package at Tenant 2’s residence with Tenant 1, an adult who resides with Tenant 2.

I am not satisfied that the Landlord served a copy of his evidence on the Tenants given he was uncertain whether he had. I am not satisfied the Landlord complied with rule 3.14 of the Rules of Procedure and therefore exclude the evidence. However, I do admit the Notice as I am satisfied this was served on the Tenants previously and therefore they are aware of this document regardless of whether it was served as evidence on this hearing.

Given I was satisfied of service of the hearing packages, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the Notice and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Landlord testified that there is a written tenancy agreement between him and the Tenants in relation to the rental unit. The Landlord was unsure when the tenancy started. He said he bought the rental unit in 2011 and the Tenants were living there. He said a new tenancy agreement was signed at that time between the parties. He testified that a new tenancy agreement was signed approximately three years ago. The Landlord testified that the tenancy is a month-to-month tenancy. He said rent is \$1,700.00 per month due on the first day of each month. He testified that all three parties signed the written tenancy agreement.

The Notice is addressed to the Tenants and relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of August 31, 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 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, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The Landlord testified that he served both pages of the Notice personally on Tenant 2 at the rental unit on July 31, 2018. He said both Tenants were present at the time.

The Landlord testified that the Tenants have not disputed the Notice.

The Landlord testified that the Tenants have paid rent until the end of October and asked that an Order of Possession be effective at the end of October.

Analysis

The Landlord was permitted to serve a notice to end tenancy on the Tenants pursuant to section 47 of the *Act* based on the grounds listed in the Notice.

I accept the undisputed testimony of the Landlord regarding service of the Notice and find the Notice was served on the Tenants in accordance with section 88(a) of the *Act*. I find the Tenants received the Notice July 31, 2018.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

The Tenants had 10 days from receiving the Notice on July 31, 2018 to dispute it under section 47(4) of the *Act*. I accept the undisputed testimony of the Landlord that the Tenants did not dispute the Notice. I have no evidence before me that the Tenants did.

Therefore, pursuant to section 47(5) of the *Act*, the Tenants are conclusively presumed to have accepted that the tenancy ended August 31, 2018, the effective date of the Notice. The Tenants were required to vacate the rental unit by August 31, 2018.

I find the Landlord is entitled to an Order of Possession. I grant the Landlord an Order of Possession effective October 31, 2018.

Conclusion

The Landlord is granted an Order of Possession effective at 1:00 p.m. on October 31, 2018. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme 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: October 05, 2018

Residential Tenancy Branch