



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. The Landlord had filed an Application for Dispute Resolution on August 29, 2018 (the "Application"). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated August 18, 2018 (the "Notice").

The Landlord appeared at the hearing. The Tenant did not appear for the hearing which lasted 14 minutes. 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 Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that he sent the hearing package to the Tenant at the rental unit by registered mail on September 7, 2018. The Landlord had submitted the receipts relating to this. The receipt shows the package was addressed to the Tenant and sent to the rental unit. The receipt includes Tracking Number 1 as noted on the front page of this decision. With permission, I looked this up on the Canada Post website which shows the package was received and signed for by the Tenant on September 19, 2018.

The Landlord testified that he sent the evidence to the Tenant at the rental unit by registered mail on October 1, 2018. The Landlord had submitted the receipts relating to this. The receipt shows the package was addressed to the Tenant. It includes the city, province and postal code for the rental unit. The receipt includes Tracking Number 2 as noted on the front page of this decision. With permission, I looked this up on the Canada Post website which shows the package was sent October 1, 2018 and a final notice card left October 10, 2018. The package has not been picked up.

Based on the undisputed testimony of the Landlord, evidence submitted, and Canada Post website information, I find the Tenant was served with the hearing package in accordance with section 89(2)(b) of the *Residential Tenancy Act* (the “Act”). Further, I find the hearing package was sent in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

Based on the undisputed testimony of the Landlord, evidence submitted, and Canada Post website information, I find the Tenant was served with the evidence in accordance with section 88(c) of the *Act*. The Tenant is deemed to have received the evidence pursuant to section 90 of the *Act*. I note that the Tenant is not permitted to avoid service by failing to pick up the package. I note that the Landlord failed to comply with rule 3.14 of the Rules of Procedure in relation to the date of service of the evidence. However, the Tenant received the hearing package in sufficient time to appear at the hearing and yet he did not appear at the hearing to raise an issue in relation to the timing of the service of the evidence. Given this, and given the nature of the evidence, I admit the evidence in the circumstances.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was 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 Landlord. 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?

Background and Evidence

The Landlord had submitted a written tenancy agreement. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started April 1, 2018 and is a month-to-month tenancy. Rent is \$950.00 per month due on the first day of each month. The agreement is signed by both parties.

The Landlord submitted a copy of the Notice. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of September 18, 2018. The grounds for the Notice are that:

1. Tenant is repeatedly late paying rent.
2. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
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, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant and jeopardize a lawful right or interest of another occupant or the landlord.
4. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.

The Landlord testified that he served the Notice on the Tenant in person August 18, 2018. He submitted a Proof of Service signed by a witness in support of this.

The Landlord testified that the Tenant never disputed the Notice.

The Landlord testified that the Tenant paid rent late in June, July and August of this year. He submitted e-transfers in support of this. He testified that the Tenant has not paid any rent since the Notice was issued and therefore has only paid rent until the end of August.

Analysis

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

Based on the undisputed testimony of the Landlord and Proof of Service, I find the Tenant was served with the Notice in accordance with section 88(a) of the *Act*. Given he was served personally, I find the Tenant received the Notice August 18, 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 Tenant had 10 days from receiving the Notice on August 18, 2018 to dispute it under section 47(4) of the *Act*. I accept the undisputed testimony of the Landlord 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 September 30, 2018, the corrected effective date of the Notice. The Tenant was required to vacate the rental unit by September 30, 2018.

I find the Landlord is entitled to an Order of Possession. Given the corrected effective date of the Notice has passed, and that the Tenant has not paid rent since August, I grant the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55 of the *Act*.

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.

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 16, 2018

Residential Tenancy Branch