



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STEWART HOUSE SOCIETY
and [tenant name suppressed to protect privacy]

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 October 3, 2018 (the “Application”). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated August 16, 2018 (the “Notice”). The Landlord also sought reimbursement for the filing fee.

The Property Manager appeared at the hearing for the Landlord. The Tenant did not appear for the hearing which lasted 15 minutes. I explained the hearing process to the Property Manager who did not have questions when asked. The Property Manager 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 Property Manager testified that she sent the hearing package and evidence to the Tenant at the rental unit by registered mail on October 8, 2018. The Landlord had submitted receipts relating to this. The receipts show the package was sent October 6, 2018. They show the package was addressed to the Tenant and included the postal code for the rental unit. The receipts include Tracking Number 1 as noted on the front page of this decision. With permission, I looked Tracking Number 1 up on the Canada Post website. The website shows the package was sent October 6, 2018. It shows the package was delivered and signed for October 10, 2018 although it does not show the signatory name.

Based on the undisputed testimony of the Property Manager, evidence submitted, and Canada Post website information, I find the Tenant was served with the hearing

package and evidence in accordance with sections 59(3), 88(c) and 89(2)(b) of the *Residential Tenancy Act* (the “*Act*”) and rule 3.1 of the Rules of Procedure.

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

The Landlord had submitted a written tenancy agreement. It names a different landlord. The Property Manager confirmed the name of the Landlord changed. The Landlord had submitted evidence in relation to this. The Landlord had also submitted a notice sent to tenants about this name change.

The agreement names the Tenant and relates to the rental unit. The tenancy started January 1, 2016 and is a month-to-month tenancy. Rent is due on or before the first day of each month. The agreement is signed by the Tenant and on behalf of the Landlord.

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 an agent for the Landlord. It has an effective date of September 24, 2018. The grounds for the Notice are that:

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.
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 Property Manager testified that she posted the Notice on the door of the rental unit on August 16, 2018. A Proof of Service was submitted as evidence; however, it does not accord with the testimony of the Property Manager.

The Property Manager was not aware of the Tenant ever disputing the Notice.

The Property Manager confirmed that the grounds listed in the Notice are accurate. She also confirmed that the details provided are accurate. The details provided state that the Tenant regularly allows unreported guests to stay in the unit for days using illegal drugs and that she also regularly has noisy late-night parties.

The Property Manager sought an Order of Possession effective two days after service on the Tenant given the circumstances of the tenancy.

The Landlord submitted evidence in relation to the grounds for the Notice.

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 Property Manager, I find the Tenant was served with the Notice in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice on August 19, 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 19, 2018 to dispute it under section 47(4) of the *Act*. I accept that the Property Manager is not aware of the Tenant disputing the Notice. I have no evidence before me that she did. I find the Tenant did not dispute the Notice.

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 do not find it necessary to determine whether the Landlord in fact had grounds to issue the Notice as the Tenant did not dispute it and therefore the conclusive presumption set out in section 47(5) of the *Act* applies.

I find the Landlord is entitled to an Order of Possession. The Property Manager sought an Order of Possession effective two days after service on the Tenant. I find this appropriate in the circumstances. I grant the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55 of the *Act*.

As the Landlord was successful in this application, I grant the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 67 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.

As the Landlord was successful in this application, I grant the Landlord \$100.00 as reimbursement for the filing fee and grant the Landlord a Monetary Order in this amount.

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: November 15, 2018

Residential Tenancy Branch