



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for cause pursuant to section 55.

The landlord was represented by its manager ("**HN**") at the hearing. Both tenants attended the hearing. All were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The HN testified, and the tenants confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. I find that the tenants have been served with the required documents in accordance with the Act.

The tenants did not submit any documentary evidence in support of their response to the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting 8. Monthly rent was listed on the tenancy agreement as \$1,650, but the parties agree that the tenants actually pay \$1,750 in monthly rent. The tenants paid the landlord a security deposit of \$1,650. The landlord still retains this deposit.

The tenants are not in rental arrears and paid December 2019's monthly rent in full.

HN testified that he served the tenants a One Month Notice to End Tenancy for Cause (the "**Notice**"), on August 28, 2019 by placing it in the mail slot of the rental unit. The landlord entered into evidence a Proof of Service form dated August 28, 2019 on which a witness ("**PM**") attested that he observed HN serve the Notice by leaving a copy of the Notice in the mailbox or mail slot at the tenant's residence.

The tenants denied receiving this Notice as alleged by HN. The tenants testified that the first time they became aware of the Notice was when they received the landlord's evidence package on November 2, 2019.

The parties agreed that the landlord applied for an order of possession based on a prior one month notice to end tenancy which came to a hearing on August 15, 2019. At that hearing, the arbitrator dismissed the landlord's application, as he failed to provide adequate proof that he served the notice to end tenancy.

The Notice indicates an effective move-out date of September 30, 2019.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant has allowed an unreasonable number of occupants in the unit/site;
- 2) the 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;
- 3) the 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;

- to jeopardize a lawful right or interest of another occupant or the landlord;

The landlord provided the following details of the causes to end tenancy on the Notice:

The tenants have a heavy amount of traffic that visit the home on a daily basis. Furthermore, tenants and their guests have had police called to the home on a regular basis due to the activity that takes place from the home. I believe that the tenants are selling drugs as well as stolen goods from the home as there are trucks that come full with stuff and leave empty as well as the individuals that visit look like people that use drugs.

HN provided eight letters from various neighbours of the tenants in corroboration of the causes set out in the Notice.

The tenants gave testimony disputing the facts alleged by landlord.

However, for the reasons that follow, it is not necessary for me to recount the details of these submissions.

Analysis

Sections 47(4) and (5) of the Act state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Section 88 of the Act states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act

to be given to or served on a person must be given or served in one of the following ways:

[...]

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

Section 90 of the Act states:

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

[...]

(d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

Based on HN's testimony and the evidence submitted by the landlord, I find that BN left a copy of the Notice in the mailbox at the address the tenants reside. I find that HN's testimony is supported by the proof of service attestation of PM.

I find that, per section 88(f) of the Act, this constitutes effective service of the Notice. I note that the Act does not require the landlord to prove that the tenants received the Notice; the landlord must only prove that the Notice was left in the tenants' mail slot. I find that the landlord has proved this.

Pursuant to section 90 of the Act, I find that the tenants are deemed served with the Notice on October 1, 2019 (three days after the landlord left it in the tenants' mail slot).

Although the tenants participated in the hearing, they did not file an application to dispute the Notice within 10 days of being deemed served with the Notice, or at all. Therefore, pursuant to section 47(5) of the Act, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (September 30, 2019), and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

As the tenants have paid December rent in full, I order that the tenants must vacate the rental unit on or before December 31, 2019 at 1:00 pm.

The landlord is reminded of his obligations under the Act regarding the return of the security deposit.

Conclusion

Pursuant to section 55 of the Act, I order that the tenants vacate the rental unit on or before December 31, 2019.

Dated: December 10, 2019

Residential Tenancy Branch