



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 ENERGY REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPC

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the application October 22, 2019 (the “Tenant’s Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated July 10, 2019 (the “Notice”) and dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities. The Tenant sought more time to file the dispute.

The Landlord filed the application October 28, 2019 (the “Landlord’s Application”). The Landlord sought an Order of Possession based on the Notice as well as reimbursement for the filing fee.

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

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Agent testified that the hearing package and evidence for the Landlord’s Application was put in the mailbox for the rental unit November 01, 2019.

The Agent confirmed receipt of the hearing package for the Tenant’s Application.

In relation to the Landlord’s evidence, I am satisfied based on the undisputed testimony of the Agent that the evidence was left in the mailbox of the rental unit November 01, 2019 and therefore find the Tenant was served with the evidence in accordance with

section 88(f) of the *Act*. The Tenant is deemed to have received the evidence pursuant to section 90(d) of the *Act*.

Section 89(2) of the *Residential Tenancy Act* (the "*Act*") sets out the permitted methods of service for the Landlord's Application and states:

(2) An application by a landlord under section 55...must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1)...

Leaving the hearing package in the mailbox is not a permitted form of service under the *Act*. Therefore, the Tenant cannot be deemed to have received the hearing package under section 90 of the *Act*. The Tenant did not appear at the hearing to confirm receipt of the hearing package. There is no evidence before me showing the Tenant received the hearing package. In the circumstances, I am not satisfied of service and dismiss the Landlord's Application. The Landlord has leave to re-apply in relation to the Order of Possession. The request for reimbursement for the filing fee is dismissed without leave to re-apply as the Landlord should have served the hearing package in accordance with the *Act*.

However, the Tenant has applied to dispute the Notice and a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities as well as sought more time to file the dispute. Therefore, I will consider whether the Landlord is entitled to an Order of Possession pursuant to the Tenant's Application.

The Agent confirmed the Tenant is still living at the rental unit and that the Landlord is seeking an Order of Possession for the rental unit. The Agent advised that the Tenant

was never served with a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities and therefore I have not considered this.

I note that the hearing proceeded for more than 10 minutes, during which the Tenant did not call into the hearing.

The Agent was given an opportunity to present relevant evidence and make relevant submissions.

Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started June 01, 2013 and is a month-to-month tenancy. Rent is \$485.00 per month due on the first day of each month. The agreement is signed for the Landlord and by the Tenant.

The Notice is addressed to the Tenant and relates to the rental unit. It is signed and dated by the Agent. It has an effective date of August 31, 2019. The grounds for the Notice are that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and put the Landlord's property at significant risk.

The Agent confirmed the Proof of Service submitted in evidence. It states the Agent posted the Notice on the rental unit door July 10, 2019. It is signed by a witness. The Agent testified that both pages of the Notice were posted.

The Agent testified as follows in relation to the grounds for the Notice. The Tenant is extremely disruptive to other tenants. The Landlord receives complaints from the people above and beside the Tenant about partying and loud music. The maintenance people advise that the rental unit is in poor condition. The Tenant once broke a window in the rental unit to get in despite someone being on their way to assist.

The Agent testified that the Tenant accepted the Notice and was looking for another place. The Agent testified that the Landlord accepted rent for "use and occupancy" only while the Tenant was looking for a place. The Agent said she then received the Tenant's Application disputing the Notice.

The Agent sought an Order of Possession effective at 1:00 p.m. on December 31, 2019.

Analysis

Rule 7.3 of the Rules of Procedure (the “Rules”) states that an arbitrator can dismiss an application for dispute resolution without leave to re-apply if a party fails to attend the hearing.

Here, the Tenant failed to attend the hearing and provide evidence regarding the application. I have not considered the Tenant’s evidence as the Tenant did not appear to present it as required by rule 7.4 of the Rules. In the absence of evidence from the Tenant regarding the basis for the application, the Tenant’s Application is dismissed without leave to re-apply.

Section 55 of the *Act* requires an arbitrator to issue an Order of Possession if a tenant applies to dispute a notice to end tenancy, the application is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

Section 52 of the *Act* outlines the form and content required for a notice to end tenancy issued under the *Act*.

I accept the undisputed testimony of the Agent about the issues with the Tenant and am satisfied the Landlord has grounds for the Notice.

Further, based on the undisputed testimony of the Agent and Proof of Service, I accept that the Notice was served on the Tenant on July 10, 2019 in accordance with section 88(g) of the *Act*. The Tenant is deemed to have received the Notice July 13, 2019 pursuant to section 90(c) of the *Act*. The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. The Tenant did not dispute the Notice until October 22, 2019, well outside the time limit for doing so. The Tenant did not appear at the hearing to provide a basis for the request for more time to file the dispute and this request has been dismissed without leave to re-apply. The Tenant is conclusively presumed to have accepted the Notice pursuant to section 47(5) of the *Act*. Given the above, I uphold the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

I have dismissed the Tenant's Application, upheld the Notice and found the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession for the rental unit. The Order of Possession is effective at 1:00 p.m. on December 31, 2019.

Conclusion

The Landlord is granted an Order of Possession pursuant to section 55 of the *Act*. The Order is effective at 1:00 p.m. on December 31, 2019. The 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: December 12, 2019

Residential Tenancy Branch