



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jabs Construction Ltd.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes FFL, OPC

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on January 23, 2020 (the "Application"). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated January 07, 2020 (the "Notice"). The Landlord also sought reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord with the Witness and Building Manager. The Tenant did not appear for the hearing which lasted 20 minutes. I explained the hearing process to the Agent, Witness and Building Manager who did not have questions when asked. The Agent, Witness and Building Manager provided affirmed testimony.

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

The Agent confirmed that the hearing package and evidence were sent by registered mail to the rental unit on January 24, 2020. The package had been returned to the Landlord as unclaimed and a photo of this submitted. The package includes Tracking Number 1. I looked this up on the Canada Post website which shows notice cards were left in relation to the package on January 30, 2020 and February 08, 2020.

Based on the undisputed testimony of the Agent, 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"). The Tenant is not permitted to avoid service by failing to pick up the registered mail package. The Tenant is deemed to have received the package January 29, 2020 pursuant to section 90(a) of the *Act*.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent and Witness were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agent and Witness. 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

A written tenancy agreement was submitted as evidence. The tenancy started February 01, 2006 and is a month-to-month tenancy. The Agent testified that rent is currently \$680.00 per month. Rent is due on or before the first day of each month. The Tenant paid a \$267.50 security deposit. The agreement is signed by the Tenant and for the Landlord.

The Agent sought to keep \$100.00 of the security deposit as reimbursement for the filing fee.

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 Agent. It has an effective date of February 29, 2020. 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 seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The details of cause on the Notice state:

On December 31, 2019, [the Tenant] assaulted a resident inside the building. [The Tenant] stuck his finger in the resident's ear and proceeded by kicking and spitting on the resident. The RCMP were contacted and [a Constable] attended [police file number]. Previously, [the Tenant] was sent a letter on May 17, 2019 regarding inappropriate behaviour towards this resident and instructed by the RCMP and landlord not to have any further contact with the resident he assaulted on December 31, 2019.

The Agent confirmed the Proof of Service submitted in relation to the Notice. The Proof of Service states that the Notice was sent to the Tenant by registered mail on January 07, 2020. The Landlord submitted a copy of the envelope showing it was sent to the Tenant at the rental unit. The envelope includes Tracking Number 2. The Landlord also submitted the envelope showing it was unclaimed and returned. Further, the Landlord submitted the Canada Post website information showing notice cards were left in relation to the package January 10, 2020 and January 18, 2020.

The Agent was not aware of the Tenant ever disputing the Notice.

The Agent testified as follows in relation to the grounds for the Notice. The Tenant assaulted the victim December 31, 2019. The circumstances were very serious. The police were called. The Tenant was told not to talk to the victim. The Tenant had been harassing the victim back in May and was sent a letter about this. The police also talked to the Tenant about this back in May.

The Witness testified about the assault as follows. He was going down the stairs in the building and the Tenant blocked his way. The Tenant repeatedly told him to say sorry. The Tenant was acting aggressively. He tried to leave but the Tenant shoved his finger in his ear, kicked him and spit on him. The Tenant was laughing and making fun of him. Since this incident the Tenant has continued to harass him. The Tenant hits his ceiling in the mornings.

The Agent sought an Order of Possession effective as soon as possible given the significant safety risk posed by the Tenant.

Analysis

The Landlord was permitted to serve the Notice pursuant to sections 47(1)(d)(i) and (ii) of the *Act* based on the grounds listed in the Notice.

Based on the undisputed testimony of the Agent, Proof of Service, envelope and Canada Post website information, I find the Tenant was served with the Notice in accordance with section 88(c) of the *Act*. The Tenant is not permitted to avoid service by failing to pick up the registered mail package. The Tenant is deemed to have received the Notice January 12, 2020 pursuant to section 90(a) of the *Act*.

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 January 12, 2020 to dispute the Notice under section 47(4) of the *Act*. I accept that the Agent is not aware of the Tenant disputing the Notice. I have no evidence before me that the Tenant did dispute the Notice. 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 February 29, 2020, the effective date of the Notice. The Tenant was required to vacate the rental unit by February 29, 2020.

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.

However, based on the undisputed testimony of the Agent and Witness, I am satisfied that the Tenant significantly interfered with or unreasonably disturbed the Witness who is an occupant of the residential property. I am satisfied the Landlord had grounds to issue the Notice.

I find the Landlord is entitled to an Order of Possession. I issue the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55(2)(b) of the *Act*.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Landlord can keep \$100.00 of the security deposit as reimbursement for the filing fee.

Conclusion

The Landlord is issued 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 award the Landlord \$100.00 as reimbursement for the filing fee. The Landlord can keep \$100.00 of the security deposit as reimbursement for the filing fee.

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: March 27, 2020

Residential Tenancy Branch