



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMHA Kootenays
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on February 28, 2020 (the "Application"). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated February 12, 2020 (the "Notice").

The Agents appeared at the hearing for the Landlord. The Tenant did not appear at the hearing which lasted 25 minutes. I explained the hearing process to the Agents who did not have questions when asked. The Agents 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 Agents testified that the hearing package and evidence were sent by registered mail to the Tenant on March 06, 2020. The Agents provided Tracking Number 1. The Agents testified that the package was sent to the Tenant at his address provided on his application for the rental unit. The Landlord had submitted the receipts for this. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered and signed for April 02, 2020.

Based on the undisputed testimony of the Agents, receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(2)(b) of the *Residential Tenancy Act* (the "Act"). The Tenant is not permitted to avoid or delay service by failing to pick registered mail up. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package March 11, 2020. I also find the Tenant picked the package up April 02, 2020, in sufficient time to appear at the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agents. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted. It is between the Landlord and Tenant in relation to the rental unit. The tenancy was to start March 01, 2020 and be a month-to-month tenancy. Rent was to be \$375.00 per month due on the first day of each month. The Tenant was to pay a \$400.00 security deposit. The agreement was signed December 09, 2019 by the Tenant and for the Landlord.

The Agents testified that the Tenant never paid the security deposit, never moved into the rental unit and never paid rent.

Agent D.S. testified as follows.

She arranged to meet with the Tenant February 06, 2020 to exchange keys and do a walk-through of the rental unit. During the meeting, the Tenant was extremely aggressive. He did not have enough for the security deposit and “flew off the handle” when told he had to pay the security deposit before getting keys. The Tenant was condescending towards her. His body language was aggressive. She felt very uncomfortable. The Tenant was agitated and made strange remarks. She told the Tenant they would meet another day about this. She told the Tenant to leave. The Tenant refused to leave. She told the Tenant she would call the RCMP if he did not leave. The Tenant eventually left. She did call the RCMP to report the incident.

She had a second meeting with the Tenant February 11, 2020. The Tenant smelled of alcohol and vomited in the garbage can. The Tenant would not look at or talk to the Agents. The Tenant was sobbing uncontrollably. The Agents determined that the Tenant was not a good fit for the building.

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 Agent D.S. It has an effective date of February 29, 2020. The grounds for the Notice are as follows:

- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- The 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 or the Landlord; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Agents testified that the Notice was sent to the Tenant at his address on the rental application by registered mail. The Agents confirmed Tracking Number 2 relates to this. A receipt was submitted for this. I looked Tracking Number 2 up on the Canada Post website which shows the Notice was sent February 12, 2020 and delivered and signed for April 02, 2020. It shows a notice card was left February 13, 2020.

The Agents testified that they are not aware of the Tenant disputing the Notice.

Analysis

Based on the written tenancy agreement, I am satisfied the parties entered into a tenancy agreement December 09, 2019.

Section 16 of the *Act* states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The Notice was issued pursuant to section 47 of the *Act*.

Based on the undisputed testimony of the Agents, receipt and Canada Post website information, I am satisfied the Tenant was served with the Notice in accordance with section 88(c) of the *Act*. The Tenant is not permitted to avoid or delay service by failing to pick registered mail up. In the absence of an explanation from the Tenant as to why the registered mail was not picked up until April 02, 2020, pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Notice on February 17, 2020.

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 February 17, 2020 to dispute the Notice under section 47(4) of the *Act*. I accept that the Agents are not aware of the Tenant disputing the Notice. I have no evidence before me that he did. I am satisfied 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 March 31, 2020, the corrected effective date of the Notice.

I am satisfied 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*.

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
SUBJECT TO THE MINISTERIAL ORDER M089 REFERRED TO ON THE LAST
PAGE OF THIS DECISION.

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: April 07, 2020

Residential Tenancy Branch