



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ace Containers Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing that dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause, pursuant to sections 47 and 55.

The landlord was represented by representatives MP (the landlord) and GP. Tenant JB also attended. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

As both parties were in attendance I confirmed there were no issues with service of the landlord's application for dispute resolution and evidence. In accordance with sections 88 and 89 of the Act, I find both parties were duly served with the application and evidence.

Issue to be Decided

Is the landlord entitled to an order of possession for cause?

Background and Evidence

While I have turned my mind to the evidence and the testimony of both parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The tenant affirmed the tenancy started in September 2017. Monthly rent is \$750.00 and is due on the first day of the month. There are no arrears and security deposit was not collected.

The landlord did not dispute the details of tenancy, but affirmed she is not aware of the details of the tenancy because she got possession of the property on February 20, 2020.

Both parties agreed that the tenant was personally served with a One Month Notice to End Tenancy for Cause (the "Notice") on February 26, 2020. The effective date of the Notice is April 14, 2020.

A copy of the Notice was provided. The grounds to end the tenancy cited in the Notice were:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk.
- Rental unit/site must be vacated to comply with a government order

The Notice specifies: "Do not occupy these premises issued by RPNO Building Official." A 'do not occupy these premises' document issued by the building inspection department of [anonymized] was submitted into evidence.

A copy of a signed Proof of Service Notice to End Tenancy form which indicates that the Notice was personally served to the tenant at 12:41 PM on February 26, 2020 was entered into evidence. The proof of service form is signed by a witness and the tenant.

The landlord affirmed there is a health and safety concern about the tenant residing in the rental unit. The tenant affirmed he is not able to move-out at this time because of the Covid19 pandemic.

The landlord applied for an order of possession on March 09, 2020.

Analysis

Based on the undisputed testimony of both parties and the signed proof of service form, I find that the landlord served the Notice on the tenant personally on February 26, 2020.

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 47(5) is mandatory, and I do not have discretion as to its application. Based on the parties testimony I find that the tenant did not file an application to dispute the notice within 10 days, or at all.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (April 14, 2020) and must move out of the rental unit. As this has not occurred, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55 of the Act.

The Notice is in accordance with Section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date, the grounds to end tenancy and is in the approved form.

It is not necessary for me to determine if the tenant acted as alleged by the landlord on the Notice due to the application of sections 47(4) and (5) of the Act.

As such, I make no findings as to the truth of the landlord's allegations about the conduct of the tenant.

Conclusion

I grant an order of possession to the landlord effective two days after service.

I order that the landlord serve a copy of this decision and attached order of possession on the tenants immediately upon its receipt, in accordance with section 88 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 17, 2020