



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 applicant's representative (landlord) LC attended at the date and time set for the hearing of this matter. The respondent (tenant) did not, although I waited until 9:47 A.M. to enable her to connect with this teleconference hearing scheduled for 9:30 A.M. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the applicant and I were the only persons who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the notice of hearing and evidence (the Materials) by posting it to the tenant's door on March 20, 2020. I find the tenant was served the Materials in accordance with section 89(2)(d) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by attaching it to the door on the 3rd day after it was posted. Given the testimony of the landlord, I find the tenant is deemed to have received the Materials on March 23, 2020.

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 the attending party, 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 landlord affirmed he became the owner of the rental unit on June 19, 2013 and the tenant was already living at the rental unit at the time. Monthly rent is \$242.00 and is due on the first day of the month. At the outset of the tenancy a security deposit of \$234.00 was collected and the landlord still holds it in trust. The tenant is in arrears for \$11.53 for March's rent. A tenancy agreement was submitted into evidence.

The landlord affirmed the Notice was posted on the tenant's door on November 29, 2020 and sent a copy of the Notice by registered mail on the same day. The tracking number is on the cover page of this decision. The effective date of the Notice is January 31, 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:
 - Significantly interfered with or unreasonably disturbed another occupant of the landlord

The Notice specifies:

Tenant has disturbed the quiet enjoyment of the neighbourhood, with multiple reports of trespassing, verbal assaults, threats, brandishing a stick as a weapon, throwing human feces, and yelling and swearing at children. After written warning landlord has received additional complaints on November 26th. On file emails and letters from neighbours.

A copy of a signed Proof of Service Notice to End Tenancy form which indicates that the Notice was attached to the door of the tenant at 2:10 P.M. on November 29, 2019 was entered into evidence. The proof of service form is signed by a witness and the landlord.

The landlord applied for an order of possession on March 10, 2020.

Analysis

Based on the undisputed testimony of the landlord and the signed proof of service form, I find that the tenant is deemed served the Notice on December 02, 2019, three days after it was posted to her door. I find the tenant was served the Notice in accordance with section 88 (g) of the Act.

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 landlord's 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 (January 31, 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(2) 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 21, 2020

Residential Tenancy Branch