



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Macdonald Commercial Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

In this dispute, the landlord seeks an order of possession for cause, pursuant to sections 47 and 55 of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on April 8, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 29, 2020 at 9:30 AM. The landlord’s agent (the “landlord”) attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The landlord testified that she served the Notice of Dispute Resolution Proceeding package on the tenant by way of Canada Post registered mail on April 9, 2020. Based on the undisputed testimony of the landlord, along with the registered mail receipt submitted into evidence, I find that the tenant was served in accordance with the Act.

Regarding the tenant’s non-attendance, the landlord testified that the tenant’s girlfriend had contacted her the day before this hearing. The girlfriend explained that the tenant had been arrested on May 22, 2020 for strangling his girlfriend, and that the tenant was in custody until June 3, 2020.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure* and which was relevant to the issue of this application.

Issue

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began November 23, 2018. A copy of the written tenancy agreement was submitted into evidence.

On February 7, 2020, the landlord served the tenant with a One Month Notice to End Tenancy for Cause (the "Notice"). Service was executed by the Notice being posted to the tenant's door. The Notice indicated that, unless the tenant disputed the Notice, that the tenancy would end on March 31, 2020. Page two of Notice listed several reasons for the Notice being issued. A copy of the Notice was submitted into evidence.

Finally, the landlord testified that, to the best of her knowledge, the tenant did not and has not disputed the Notice. Nor is there any indication on Residential Tenancy Branch files indicating that any such application was ever made by the tenant.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Notice was issued under section 47 of the Act for cause.

Section 47(5) of the Act states that

(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.

Based on the evidence, I conclude that the tenant did not make an application for dispute resolution. Thus, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on March 31, 2020.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and

the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the fact that the tenant failed to apply for dispute resolution within the timelines required by the Notice, pursuant to sections 46 and 55 of the Act I grant an order of possession to the landlord. This order is effective two days after service upon the tenant.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two days from the date of service. Should the tenant fail to abide by the order of possession, the order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

It should be noted, and as I explained to the landlord, that most orders of possession (with the exception of those under [sections 56](#) and 56.1 of the Act) are not presently enforceable in court during the current provincial state of emergency, as per Ministerial Order No. M089, [Residential Tenancy \(COVID-19\) Order](#), MO 73/2020.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 29, 2020

Residential Tenancy Branch