



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Housing and Health Society
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.

I left the teleconference connection open until 1:47 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord attended the hearing and 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the application and evidence (the Materials) by registered mail on April 19, 2020 in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

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 mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenant is deemed to have received the Materials on April 24, 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 landlord, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained to the landlord it is his obligation to present the evidence submitted.

The landlord affirmed the tenancy started on October 15, 2019. Monthly rent of \$1,532.50 is due on the first day of the month. At the outset of the tenancy a security deposit of \$753.75 was collected and the landlord still holds it in trust. The tenant has not vacated the rental unit. The tenancy agreement was entered into evidence.

The landlord affirmed the tenant received three written warnings due to excessive noise. Copies of the warnings dated January 27, February 03 and March 09, 2020 were submitted into evidence. The landlord also submitted two e-mails received from another tenant in the same rental building listing complaints against the respondent tenant due to noise. The complaints are between December 2019 and April 2020.

The landlord affirmed the One Month Notice to End Tenancy for Cause (the Notice) was sent by registered mail to the tenant on March 24, 2020 (the tracking number is recorded on the cover of this decision). The effective date of the Notice is April 24, 2020.

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

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 the other occupant

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice does not specify the details of the cause and it is not signed. The landlord affirmed the previous manager of the rental building sent the Notice and he believes the copy sent to the tenant was signed and provided the details of the cause.

A copy of a signed Proof of Service Notice to End Tenancy form which indicates that the Notice was sent to the tenant by registered mail on March 24, 2020 was entered into evidence.

Analysis

The Notice was mailed to the tenant on March 24, 2020. I find the tenant was deemed served with the Notice on March 29, 2020, five days after it was mailed, in accordance with sections section 88(d) and 90(d) of the Act.

Section 52 of the Act states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
 - (e) when given by a landlord, be in the approved form.

The landlord was not able to confirm if the Notice sent to the tenant was signed and specified the details of the cause. The landlord must submit an exact copy of the Notice to the application so the arbitrator can confirm its compliance with section 52 of the Act.

I find the Notice submitted is not in accordance with section 52(a) and (d) of the Act, as it is not signed and it does not specify the details of the cause.

Conclusion

I dismiss without leave to reapply the landlord's application.

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: June 02, 2020

Residential Tenancy Branch