



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 20, 2020, wherein the Landlord sought an Order of Possession based on an undisputed 1 Month Notice to End Tenancy for Cause issued on July 3, 2020 (the "Notice").

The hearing of the Landlord's Application was scheduled for teleconference at 11:00 a.m. on August 25, 2020. Only the Landlord and the property owner, C.C. called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:14 a.m. Additionally, 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 Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. C.C. testified that he served the Tenant with the Notice of Hearing and the Application on July 23, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of July 28, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed the following: this tenancy began May 24, 2020; monthly rent is \$1,475.00; and, the Tenant paid a \$737.50 security deposit.

The Landlord personally served the Notice on the Tenant on July 4, 2020. Both the Landlord and C.C. confirmed that they have not received any indication that the Tenant applied to the Residential Tenancy Branch to dispute the Notice.

D.O. confirmed that the reason the Notice was issued was that the Tenant, and/or her guests, were unreasonably disturbing other tenants of the building by yelling and screaming in the middle of the night (3:00-4:00 a.m.). This was set out clearly in the Notice. The Landlord also provided copies of text communication sent by another Tenant, A.B., who indicated she was disturbed by the noise, threatened by the Tenant, and ultimately moved from the rental building as she could not longer deal with the disruption.

Analysis

The Landlord issued the Notice pursuant to section 47 of the *Act*; the relevant portions of which provide as follows:

Landlord's notice: cause

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d)the tenant or a person permitted on the residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

...

(2)A notice under this section must end the tenancy effective on a date that is

(a)not earlier than one month after the date the notice is received, and

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(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.

Based on the Landlord's undisputed testimony and documentary evidence before me, I find that the Tenant was personally served with the Notice on July 4, 2020. I accept the Landlord's testimony that the Tenant failed to apply for dispute resolution within 10 days as required by section 47(4) of the *Act*. Pursuant to section 47(5) the Tenant is conclusively presumed to accept the end of the tenancy and must move out of the rental unit.

I find that the Landlord has met the burden of proving the Notice; namely, that the Tenant has significantly interfered with or unreasonably disturbed another occupant of the rental building.

I have reviewed the Notice and find that it complies with section 52 of the *Act* in form and content; as such, and pursuant to section 55 of the *Act* I grant the Landlord an Order of Possession. This Order shall be effective two days after service on the Tenant. Should the Tenant fail to vacate the rental unit, the Landlord may file and the Order of Possession in the B.C. Supreme Court. The Tenant is cautioned that any cost incurred by the Landlord to enforce the Order of Possession may be recoverable from the Tenant.

Conclusion

The Landlord's request for an Order of Possession based on the Notice is granted.

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: August 25, 2020

Residential Tenancy Branch