



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”) to enforce a One Month Notice to End Tenancy for Cause (the “Notice”) issued August 23, 2020. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the Act states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were served to the Tenant by Canada Post Registered mail, sent on September 18, 2020, as tracking number was provided as proof of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the Act.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence 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, pursuant to section 55 of the *Act*?

Background and Evidence

The Landlord testified that they served the Notice to the Tenant on August 23, 2020, by attaching it to the Tenant's door or other conspicuous place. The Notice indicated an end of tenancy date of September 30, 2020.

The Landlord testified that the Tenant had not disputed the Notice or moved out in accordance with the Notice. The Landlord requested an order of possession to enforce their Notice to end tenancy.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause, a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

Landlord's notice: cause

47 (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.

I find that the Tenant was deemed to have received the Notice to end the tenancy on August 26, 2020, three days after the Notice had been posted to their door. Pursuant to section 47(8) of the *Act*, the Tenant had 10 days to dispute the Notice. Consequently,

the Tenant had until September 5, 2020, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In this case, I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired. Therefore, pursuant to section 47(5a) I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

Section 55(2b) of the *Act* states that a landlord may request an order of possession if 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.

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

The Landlord is therefore entitled to an Order of Possession pursuant to section 55(2) of the *Act*. I grant the Landlord an Order of Possession effective not later than 2 days after service of this Order upon the Tenant. Should the Tenant fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Conclusion

I find that the Tenant did not dispute the Notice and is therefore presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 2, 2020

Residential Tenancy Branch