



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, OLC, CNE-MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 21, 2020 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause and for more time to file the dispute;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- To dispute a One Month Notice to End Tenancy for End of Employment and for more time to file the dispute.

The Landlord appeared at the hearing. The Landlord sought an Order of Possession based on a One Month Notice to End Tenancy for Cause with an effective date of October 01, 2020 (the “Notice”).

Nobody appeared at the hearing for the Tenant. I waited 10 minutes at the outset for the Tenant to appear; however, the Tenant did not call into the hearing which lasted 40 minutes.

I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. The Landlord confirmed receipt of the hearing package. The Landlord testified that her evidence was provided to the Tenant in person October 29, 2020 and November 10, 2020.

The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice and testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Landlord testified as follows. She owns the rental unit. There is a written tenancy agreement between her and the Tenant. The start date of the written tenancy agreement between the parties is July 01, 2020; however, the Tenant moved into the rental unit in 2016. It is a month-to-month tenancy. Rent is \$580.00 due on the first day of each month. The Tenant paid a \$250.00 security deposit and no pet damage deposit.

The Notice was submitted. It is addressed to the Tenant and relates to the rental unit. It is signed by the Landlord. It has an effective date of October 01, 2020. The Landlord testified that the copy of the Notice served on the Tenant was dated. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has:
 - a) significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - b) put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:
 - a) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord testified that she served the Notice on the Tenant in person September 01, 2020.

The Landlord provided a summary of the basis for the Notice including that the Tenant causes a lot of trouble, treats everyone badly, is verbally violent and brings drugs into the house. The Landlord testified that the Tenant was served a warning letter; however, his behaviour did not change.

The Landlord testified that no rent is outstanding but \$72.80 in utilities is outstanding. The Landlord sought an Order of Possession as soon as possible.

Analysis

Rule 7.3 of the Rules of Procedure (the “Rules”) states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Tenant did not attend the hearing, there is no evidence before me as to the basis for the Application. Given this, the Application is dismissed without leave to re-apply.

Section 55(1) of the *Residential Tenancy Act* (the “Act”) states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Notice was issued pursuant to section 47 of the *Act*.

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*.

I am satisfied based on the undisputed testimony of the Landlord that the Notice was served on the Tenant in person September 01, 2020. I find the Notice was served in accordance with section 88(a) of the *Act*. The Tenant had until September 11, 2020 to dispute the Notice. The Application was not filed until September 15, 2020 and not

completed until September 21, 2020. Therefore, the Tenant did not dispute the Notice in time.

The Tenant did not appear at the hearing to provide a basis for the request for more time to file the dispute and therefore the time limit is not extended pursuant to section 66(1) of the *Act*. Given this, the Tenant failed to dispute the Notice in accordance with section 47(4) of the *Act* and is conclusively presumed to have accepted that the tenancy ended October 31, 2020 pursuant to section 47(2) and (5) of the *Act*. The Tenant was required to vacate the rental unit by October 31, 2020 pursuant to section 47(5)(b) of the *Act*.

The Tenant's dispute of the Notice has been dismissed without leave to re-apply. Further, the Tenant is conclusively presumed to have accepted the Notice pursuant to section 47(5) of the *Act*. I am satisfied based on the undisputed testimony of the Landlord that the Tenant's copy of the Notice was dated. Given this, I find the Notice complies with section 52 of the *Act* in form and content.

The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I issue the Landlord an Order of Possession effective two days after service on the Tenant. I note that the Tenant has paid rent for November. The Tenant is only required to pay rent for the days he remains in the rental unit and the Landlord must reimburse the Tenant for rent paid for days the Tenant does not remain in the rental unit in November.

Conclusion

The Landlord is issued an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective two days after service on the Tenant. The Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme 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 *Act*.

Dated: November 17, 2020

Residential Tenancy Branch