



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55.

The landlords attended the hearing ("the landlord") and had the opportunity to call witnesses and present affirmed testimony and written evidence. The landlord called the witness DB who provided affirmed testimony. The hearing process was explained, and the landlord was given an opportunity to ask questions about the process.

The tenants ("the tenant") did not attend the hearing.

I kept the teleconference line open from the scheduled time for the hearing for an additional 30 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

Service

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Hearing and Application for Dispute Resolution for this hearing.

The landlord testified they personally served each tenant with a Notice of Hearing and evidence package on December 1, 2022, in the presence of the witness DB. The witness DB affirmed each tenant was served as they landlord testified.

Section 15 of *Residential Tenancy Policy Guideline #12. Service Provisions* explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

As the landlord testified to the date and time of service, the method of service, location of service, and the specifics of the documents served, all of which was supported by the witness DB, I find that the landlord has proven service of the Notice of Hearing and Application for Dispute Resolution on the tenant.

As such, I find that the tenant was served with the Notice of Hearing and Application for Dispute Resolution in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing. The tenancy began on date on December 31, 2021, as a month-to-month tenancy. Rent in the amount of \$1,550.00 is payable on the first day of each month. The tenant remitted a security deposit in the amount of \$775.00 at the start of the tenancy, which the landlord holds. The landlord submitted a copy of the tenancy agreement.

The landlord testified that the tenant was served with the landlord's One Month Notice ("**Notice**"), dated November 30, 2022, and served personally that day. The witness DB testified she was present and observed service.

The Notice states an effective move-out date of December 31, 2022.

The grounds to end the tenancy cited in that Notice were:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. the 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 another occupant of the property.

The Notice provided that the tenant may dispute the Notice within ten days of service. The landlord testified the tenant did not file a dispute.

The landlord submitted a copy of the Notice which is in the RTB form.

The Notice stated:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc.
This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s): Tenant, Karolina Skuba, yells screams, swears and slams door in the middle of the night, almost every night. On Jan 16, 2022, Karolina was asked to keep the noise down and to be considerate of the neighbors. Neighbors have been complaining prior to this and to date, Nov 29, 2022. Further, Police Records will show the number of visits they have had to make. Also, surrounding neighbors can provide more information of the continuous disturbance day and especially nights. Notices have been served to end tenancy: March 15, 2022. They flaked a dispute receipt. Also, ~~say~~ said they will move, but never did. Karolina has verbally admitted to doing drugs (message from Sean Bryson on March 5, 2022 proves) where as our contract for tenancy clearly stated no recreational drugs. We, along with our neighbors all have kids, or have to go to work and the random screams ~~for~~ from anywhere between 12am-6am is very loud and disturbing for our home & ~~every~~ all neighbors surrounding our home. Sometimes it sounds like physical fights and police arrive.

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The landlord testified the grounds in the Notice were accurate. The landlord testified the tenants argue loudly frequently, scream and slam doors at any time of the night resulting in the police being called to the unit "so many times". Often the neighbours call the police. The tenant loudly argues with the police when they arrive.

The witness DB testified she rents the apartment immediately adjacent to the tenant's unit. She testified the allegations in the Notice were correct.

The landlord submitted a supporting letter from three neighbours confirming the disturbing behaviour of the tenant.

The landlord testified that the tenant remains in the unit.

The landlord requested an Order of Possession.

Analysis

I find the tenant is deemed served with the Notice as testified.

Sections 47(4) and (5) of the Act state:

(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 testimony and the notice before me, I find that the tenant was served with an effective notice and the tenant did not file an application to dispute the notice within 10 days. The Notice complies with section 52 of the Act.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out of the unit.

As this has not occurred, I find that the landlord is entitled to a two-day order of possession, pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective two days after service on the tenant.

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: April 24, 2023

Residential Tenancy Branch