

DECISION

Dispute Codes CNC

Introduction

This hearing was convened upon an application filed by the tenant on February 2, 2010 seeking to Cancel a Notice to End Tenancy given for caused dated January 2010.

All parties appeared at the hearing and gave evidence under oath.

Background and Evidence

The female tenant testified that she received the Notice to End Tenancy for Cause on January 21, 2010. The landlord confirmed that she served the tenant personally with the notice on January 21, 1010.

Although not in attendance at the start of the hearing, part-way through the hearing the tenant's son, also named as a tenant, in this matter came on the phone line. JJW confirmed that his mother received the subject Notice on January 21, 2010 but says that he was not served with the Notice and he did not sign anything.

The male tenant testified that the landlord never served notices personally and always posted them to the door. The male tenant then asked the female tenant to confirm once again how she had been served and she mother responded that she found the subject Notice posted to her door on January 21, 2010.

The landlord testified that she served the Notice by handing the notice to the female tenant in person on January 21, 2010. The landlord testified that she wished to seek an immediate Order of Possession.

Analysis

The male tenant says he was not served with the Notice and he “did not sign anything”. With respect to this matter, I refer to Section 88 of the *Residential Tenancy Act* that sets out how documents such as Notices to End Tenancy, must be served:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

I am therefore satisfied that, by having served the female tenant in person or by posting it on the door, the male tenant has also been properly deemed served as required by the Act.

The female tenant first testified she was served personally on January 21, 2010. The landlord also stated that she served the female tenant personally on January 21, 2010. When the male tenant appeared on the phone line, he denied having been served himself and testified that his mother found the notice posted the notice to the door. The female tenant then testified that she was served by way of posting the Notice on the door and confirmed that she received it on January 21, 2010. Based on the evidence of both the landlord and the female tenant, I find the tenants were duly served with the Notice to End Tenancy for Cause dated January 21, 2010, on January 21, 2010.

The Act says that once served, tenants have 10 days within which to file an application seeking to dispute the notice. If tenants do not file their application within that 10 days they are conclusively presumed to have accepted the Notice and the tenancy ends on the effective date set out on that notice. In this case, having accepted the landlord and

tenants evidence that the tenants received the Notice on January 21, 2010, and the Application for Dispute Resolution is dated February 2, 2010, I find the tenants did not file their Application for Dispute Resolution within the required 10 days. Their application is therefore dismissed.

The landlord has requested an Order of Possession. Having dismissed the tenants' application to cancel the notice and the effective date on the notice having passed, the landlord is entitled to the Order of Possession.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Should the tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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*.