

DECISION

Dispute Codes:

OPE; FF

Introduction

This is the Landlord's application for an Order of Possession and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

At the outset of the Hearing, it was determined that the Landlord sent the Notice of Hearing documents, by registered mail to the Tenant on January 7, 2011.

The Landlord's agent testified that he mailed the Landlord's evidence package to the Tenant by registered mail, but the Tenant did not accept delivery and the documents were returned to the Landlord. The Landlord provided a Canada Post Tracking number in evidence.

The Tenant testified that he did not receive the Landlord's evidence package. He stated that the letter carrier attempted to deliver it to his neighbour, and that was why it was returned.

The Landlord's agent stated that the Tenant's neighbour was home and could give testimony. The Landlord's agent dialled the Tenant's neighbour into the conference.

The Tenant's neighbour (the Landlord's witness BA) gave affirmed testimony that he did not receive any mail or letters from anybody for the Tenant at any time.

The Landlord's agent NC testified that he personally handed the Tenant the Notice to End Tenancy at the Landlord's office, at 1:00 pm on November 30, 2010.

The Tenant testified that he did not receive a Notice to End Tenancy, but only received a letter from the Landlord ending the Tenant's employment with the Landlord.

Analysis

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed facts. The test of the truth of the story must align with the balance of probabilities and, in the circumstances before me, I find the version of events provided by the Landlord to be highly probable. The Landlord's witness did not confirm the Tenant's testimony with respect to service of the Landlord's evidence package. The Tenant did not dispute that he was served with the Landlord's Application for Dispute Resolution, which sets out clearly that the Landlord was seeking an Order of Possession. Once served with the Landlord's Application, the Tenant did not immediately file his own Application to cancel the Notice. The Tenant behaved as if he accepted the Notice, by asking the Landlord to extend the end of tenancy date twice.

Considered in its totality, I favour the evidence of the Landlord over the Tenant. I find that the Tenant was served with the Notice to End Tenancy on November 30, 2010. Section 48(5) of the Act provides that a tenant may dispute a Notice to End Tenancy because of end of employment with a landlord, by filing an Application for Dispute Resolution within 10 days of receiving the Notice. Section 48(6) of the Act states that if a tenant does not dispute the Notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ended the effective date of the Notice. I find that the effective date of the Notice was December 31, 2010.

The Landlord is entitled to an Order of Possession effective 2 days after service of the Order on the Tenant.

The Landlord has been successful in its application and is entitled to recover the cost of the filing fee from the Tenant.

Conclusion

I hereby grant the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby grant the Landlord a Monetary Order in the amount of **\$50.00** against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 24, 2011.
