



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: OPC, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated August 10, 2011 and purporting to be effective September 16, 2011

Both parties appeared and gave testimony.

Issue(s) to be Decided

The issue to be determined on the landlord's application, based on the testimony and the evidence was whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause.

The burden of proof is on the landlord to justify that the Notice to End Tenancy should be enforced and an Order of Possession issued.

Background and Evidence Notice to End Tenancy

The landlord testified that the tenant had significantly interfered with or unreasonably disturbed the landlord and another resident and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord testified that, for this reason, a One Month Notice to End Tenancy for Cause was issued on August 10, 2011. A copy of this One Month Notice to End Tenancy for Cause was included as evidence.

The landlord testified that the Notice was sent by registered mail to the tenant on August 12, 2011 and was also posted on the tenant's door. However, the landlord was unable to confirm the actual date that it was posted on the door. The landlord submitted a copy of a registered mail receipt showing that registered mail was sent on August 12, 2011. According to Canada Post records, an attempted delivery was made, after which it was returned to the sender. The landlord's position is that, under the Act, a Notice sent by registered mail is deemed served in 5 days, whether or not the tenant chose to pick up the mail.

The landlord testified that the tenant had been deemed to have received the Notice, but had not filed an application to dispute the Notice and is therefore presumed to have accepted that the tenancy would be ending on the date stated by the landlord.

The tenant testified that, although he had received numerous mailings from the landlord including warning letters and other Notices to End Tenancy for Cause dated August 25, 2011 and September 9, 2011, he never received the One Month Notice to End Tenancy for Cause dated August 10, 2011. The tenant testified that he immediately filed to dispute the Notices that he did receive and a hearing is scheduled to be held in November with respect to the other Notices.

The landlord acknowledged that other Notices have been served on the tenant and stated that the One Month Notice to End Tenancy for Cause dated August 25, 2011 was issued and served in error. The landlord feels that the tenant's subsequent hearing is not relevant to the matter at hand. The landlord's position is that this current request for an Order of Possession relates to a valid One-Month Notice to End Tenancy for Cause and the tenant's failure to dispute this particular Notice that was issued on August 10, 2011 that was then properly served in accordance with the Act.

Analysis

Under section 47 (1) (d) (ii) of the Act, a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this instance, the effective date was stated as September 16, 2011, but I find the effective date would need to be revised to September 30, 2011 to comply with the Act.

The Notice was served in a registered mail package sent on August 12, 2011. Section 90 (a) of the Act deems that registered mail is served in five days, which in this case would be on August 17, 2011 and the tenant would therefore have until August 27 to dispute the Notice.

However, I find that the deeming of service under the Act is not a conclusive presumption and can still be rebutted by the addressee. In this case, I find that the

tenant was adamant that this correspondence was never received. I accept the tenant's testimony that, had this notice arrived, he would have filed to dispute it, as he did the other Notices that he acknowledged receiving from the landlord.

I find that the parties will still have an opportunity to revisit the issue of whether or not this tenancy should be terminated for cause during the upcoming hearing scheduled on the tenant's application to cancel the subsequent One-Month Notices to End Tenancy for Cause.

Given the above, I find that the landlord's application must be dismissed because of the unresolved questions raised with respect to the issue of service of the One-Month Notice to End Tenancy for Cause dated August 12, 2011 and the fact that subsequent Notices have since been issued by the landlord under the same sections of the Act..

Conclusion

I hereby dismiss this application with leave to reapply.

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: October 13, 2011.

Residential Tenancy Branch