



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, LAT

Introduction

This hearing was scheduled to hear the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; for Orders for the landlord to comply with the Act, regulations or tenancy agreement; for Orders suspending or setting conditions on the landlord's right to enter the rental; and authorization to change the locks to the rental unit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord submitted that the tenant was served with the landlord's evidence package via registered mail sent to the rental unit on October 20, 2011 and provided a copy of the registered mail receipt as proof of service. The tenant claimed that he had not received the registered mail or any notification cards from Canada Post. The tenant submitted that someone has been breaking into his locked mailbox and removing some, but not all, of his mail.

I noted that the tenant had not submitted a copy of the Notice to End Tenancy that was under dispute. The tenant replied by first stating he never received a Notice to End Tenancy from the landlord; however, upon further questioning, the tenant stated that he had provided the Notice to the Residential Tenancy Branch for copies to be made.

Much discussion ensued concerning service of documents, including service of a Notice to End Tenancy. The tenant stated several times that he never received a Notice to End Tenancy from the landlord; however, when it was pointed out that he had applied to have a Notice to End Tenancy cancelled the tenant stated he received the Notice from the mailman.

I found the tenant's submissions inconsistent and unlikely that someone is taking registered mail notification cards out of his locked mailbox. Accordingly, I accepted that the landlord sent the landlord's evidence package to the tenant on October 20, 2011. A party cannot avoid service of documents by refusal to accept or pick up registered mail. Therefore, I found the tenant to be sufficiently served with the landlord's evidence

package five days after it was mailed pursuant to section 90 of the Act and considered the evidence in making this decision.

Issue(s) to be Decided

1. Is there a basis for cancelling the 1 Month Notice to End Tenancy for Cause?
2. Is it necessary to issue Orders to the landlord as requested by the tenant?
3. Is the tenant authorized to change the locks to the rental unit?

Background and Evidence

The landlord issued 1 Month Notice to End Tenancy for Cause (the Notice) on September 9, 2011 and sent it to the tenant via registered mail on September 14, 2011. Two notification cards were left for the tenant by Canada Post but the registered mail was returned to the landlord on October 6, 2011 as unclaimed. On or about October 7, 2011 the landlord sent the Notice to the tenant again, including the registered mail tracking information, via regular mail. In the documentation mailed to the tenant on or about October 7, 2011 the landlord advised the tenant that he was deemed to be served with the Notice to End Tenancy and the tenancy would end October 31, 2011.

The tenant denied receiving any registered mail notification cards from Canada Post and denied receiving the Notice via regular mail. However, the tenant's sister who was assisting the tenant during the hearing referred to the documents sent to the tenant via regular mail. The tenant's sister informed me that the tenant had given her the documents. The tenant was asked again how he came into possession of the Notice and other documents sent to him by the landlord in the regular mail. The tenant then submitted that he had received the Notice from the mailman when the mailman came to deliver mail to the building.

The landlord submitted that the tenant was served with the Notice five days after sending it to the tenant via registered mail. The landlord orally requested an Order of Possession effective at noon on November 25, 2011. As rent for November 2011 was automatically sent to the landlord by the Ministry, the landlord agreed that the tenant would be refunded rent for the number days in November after he returns possession to the landlord.

Documentary evidence provided as evidence for this proceeding included copies of: the tenancy agreement, the Notice to End Tenancy issued September 9, 2011, the registered mail receipt and tracking information for service of the Notice, a previous Notice to End Tenancy for Cause issued in February 2011 and warning letters.

Analysis

Where a tenant receives a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice, pursuant to section 47 of the Act. If the tenant does not file to dispute the Notice within 10 days the tenant is conclusively presumed to have accepted the tenancy will come to an end and must vacate the rental unit by the effective date of the Notice.

A landlord may serve a document upon the tenant via registered mail and in this case, I accept the evidence before me that the landlord sent the tenant a 1 Month Notice via registered mail on September 14, 2011. Section 90 of the Act provides that when a document is sent by mail it is deemed to be received by the person five days later.

One purpose of the deeming provision in section 90 is so that parties do not avoid service by refusing to accept or pick up documents. The courts have found that the deeming provision of section 90 is a refutable presumption. In this case, the tenant claims that he did not receive the two Canada Post notification cards left for him by Canada Post as indicated by the tracking information provided by the landlord. The tenant explained that this is because other people can access his locked mailbox; however, the tenant did not know who was accessing his mailbox and the tenant could not provide a reasonable explanation as to why only some pieces of mail would be taken from his mailbox.

During the hearing, I found the tenant to be evasive and less than truthful in his responses to question posed to him. For example, the tenant denied receiving a Notice to End Tenancy numerous times yet finally admitted he had one in his possession when it was obvious that he had filed to dispute a Notice to End Tenancy and when his sister read from the documents sent to the tenant by the landlord.

In light of the above, I found the tenant's submission that he did not receive the two registered mail notification cards highly unlikely and the tenant has not successfully refuted the presumption that he was served with the Notice five days after it was mailed. Therefore, I deem the tenant served with the Notice to End Tenancy on September 19, 2011.

Since the tenant did not file an Application for Dispute Resolution to dispute the Notice until October 17, 2011 the tenant's opportunity to dispute the Notice has passed. I do not extend the time limit for making this application as extensions may only be granted

in extraordinary circumstances. I do not find that refusing to accept or pick up registered mail to be an extraordinary circumstance or beyond the tenant's control.

Based on a Notice to End Tenancy that was not disputed within the time limits required under the Act, I find the tenancy ended October 31, 2011. Therefore, I grant the landlord's request for an Order of Possession effective at noon on November 25, 2011.

As the tenancy has ended I considered the remainder of the tenant's requests to be moot and do not further consider those requests.

Conclusion

The tenancy has ended and the landlord is granted an Order of Possession effective at noon on November 25, 2011, as requested by the landlord.

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: November 09, 2011.

Residential Tenancy Branch