



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for cause. The tenant did not appear at the hearing. The landlord provided a registered mail receipt to show the tenant was served with the hearing documents by registered mail sent to the rental unit on January 16, 2012. The landlord testified that the hearing documents were also posted on the rental unit door on January 16, 2012. The landlord testified that the tenant may be in jail currently but the tenant's possessions remain in the rental unit.

Section 89(2) provides for service of hearing documents for an Order of Possession. Acceptable service includes the following:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Although the tenant may be in jail I am satisfied the tenant's residence is that of the rental unit. Accordingly, I find the tenant has been served with the hearing documents in a manner that complies with section 89(2) of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The tenancy commenced on January 1, 2012 and on January 5, 2012 the police raided the rental unit and arrested the tenant. The police broke down the rental unit door and advised the landlord to secure the unit. The landlord secured the unit with a new lock. The tenant has not returned to the residential building since being taken away by the police on January 5, 2012. The landlord understands that the tenant is entitled to a new key for the rental unit should he be released from tenancy before the tenancy ends.

On January 9, 2012 the landlord posted a 1 Month Notice to End Tenancy for Cause on the rental unit door. The landlord also filed this application on the same day.

On January 11, 2012 the property manager noticed the Notice posted on January 9, 2012 had been torn down and he posted another 1 Month Notice to End Tenancy for Cause. This second Notice was provided as evidence for this proceeding.

The property manager testified that the Notices frequently get torn off the rental unit door by the tenant's friends or acquaintances and the property manager re-posts the Notice.

The Notice dated January 11, 2012 has an effective date of February 29, 2012 and has not been disputed by the tenant, or an agent for the tenant.

Analysis

Where a tenant is served with a 1 Month Notice to End Tenancy, the tenant has 10 days to dispute the Notice by filing an Application for Dispute Resolution. Pursuant to section 47 of the Act, if a tenant does not dispute a Notice to End Tenancy the tenant is conclusively presumed to have accepted the tenancy will end on the effective date and must vacate the rental unit by that date.

I am satisfied the tenant has been served with a 1 Month Notice to End Tenancy for Cause and it is deemed to be received by the tenant three days after it was posted. Since more than 10 days has passed since the Notice was posted and deemed to be received by the tenant I am satisfied the tenancy shall end February 29, 2012 and I grant the landlord's request for an Order of Possession effective that date.

Provided with this decision is an Order of Possession effective at 1:00 p.m. on February 29, 2012 for the landlord to serve upon the tenant.

I make no award for the filing fee paid for this application.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on February 29, 2012.

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 31, 2012.

Residential Tenancy Branch