



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNR, FF

Introduction

This was a cross-application hearing.

The landlord applied requesting an Order of possession as the result of a 1 Month Notice to End Tenancy for Cause, and filing fee costs.

The tenants applied requesting more time to cancel the Notice issued ending the tenancy for cause and to cancel the Notice ending tenancy.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The evidence submitted to the Residential Tenancy Branch with the tenant's application was not served to the landlord; therefore, it was set aside and not considered.

Issue(s) to be Decided

Are the tenants entitled to more time to apply to cancel a Notice?

Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2011; rent is \$1,050.00 due on the last day of each month.

The landlord and the tenants agree that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants were required to vacate the rental unit on April 30, 2012.

The reasons stated for the Notice to End Tenancy were that the tenants have been repeatedly late paying rent.

The tenants agreed that they have been repeatedly late paying rent and that they only wished to have more time to vacate the rental unit.

The landlord provided a photograph to confirm that the Notice ending tenancy, a copy of the hydro bill and a letter dated March 17, 2012, were posted, in an envelope, to the tenant's door at 11:34 p.m. on March 17, 2012. The landlord's spouse was present as a witness and took a photograph of the Notice being taped to the door. At the time of posting a neighbouring occupant came out of her unit to ask what the landlord was doing. The landlord provided a copy of a March 19, 2012, email from that occupant, informing the landlord that the envelope had now been removed from the tenant's door.

The landlord supplied a copy of an April 5, 2012, email to the tenants indicating he would begin to show the unit and would supply the tenants with advance notice. The tenants responded with a written letter on the same date, indicating they did not wish the situation to be awkward and that they would like to talk with the landlord. On April 11, 2012, the landlord sent the tenants a message indicating he had dropped by to meet with the tenants and that the 30 day notice posted to the door on March 17, 2012, was non-negotiable.

Two days later the tenants responded indicating they had not received the Notice. The tenants agree that on April 13, 2012, the landlord personally served them a copy of the Notice ending tenancy. The tenants questioned the validity of posting as a method of service and indicated that the landlord was required to personally serve them the Notice.

The tenant's door is within a small common area that leads to one other unit; the home of the occupant who witnessed the landlord taping the envelope to the door.

Analysis

I have considered the testimony and evidence before me in relation to the effective date of the Notice, which is based upon the date of service of that Notice.

Section 88(g) of the Act provides detail on a service provision by posting:

(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 find, from the evidence before me and the testimony of the parties that the landlord has proven on the balance of probabilities that the Notice was posted to the tenant's door on March 17, 2012. Service was demonstrated by the photograph taken of the envelope taped to the door and by the neighbouring occupant having seen the landlord at the unit on March 17, 2012 and her March 19, 2012, email indicating the Notice had been removed from the tenant's door.

There was no evidence before me that the landlord was not being truthful in relation to the method of service used. There was also no evidence before me that the Notice was removed from the door by anyone other than the tenants. The area where the door is located is accessible by the tenants and their neighbouring occupant who reported to the landlord that within 2 days the envelope had been removed from the door. I find, on the balance of probabilities, that the only reasonable conclusion I can reach is that the tenants did remove the envelope from their door. Further, the tenants applied to dispute the Notice as a method of providing more time to vacate; a tactic that I find detracted from their assertion that they had not received the Notice that was posted to the door.

In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the landlord over the tenant's.

I find that the evidence supplied by the landlord overwhelmingly supported service completed by posting to the door on March 17, 2012. Therefore, I find that the Notice was deemed served on March 20, 2012. The effective date of the Notice was correct; April 30, 2012.

Therefore, as the effective date has passed, I have issued the landlord an Order of possession effective 2 days after service to the tenants.

On the basis of the tenant's testimony, acknowledging that they have been repeatedly late paying rent, I find that the tenant's application to cancel the Notice ending tenancy for cause issued on March 17, 2012, is dismissed and that the landlord is entitled to an Order of possession. The reason given on the Notice was undisputed by the tenants.

Further, as I have found that the Notice was served effective March 20, 2012, I find that the tenant's application to dispute the Notice was not made within the required time-frame.

As the landlord's application has merit I find that the landlord is entitled to the \$50.00 filing fee costs.

Conclusion

The tenant's application is dismissed.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the \$50.00 filing fee. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court 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: May 04, 2012.

Residential Tenancy Branch