



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Cause.

The landlord provided affirmed testimony that on May 18, 2012, in the late afternoon, she personally served the tenant the Notice of Hearing package, at the tenant's rental unit in the lower level of her home. The landlord's brother was present as a witness.

The documents are deemed served to the tenant on the day of personal delivery; however, the tenant did not attend the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on an undisputed Notice issued ending the tenancy for cause?

Background and Evidence

The tenancy commenced on February 27, 2012, rent is \$800.00 per month, due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The landlord testified that on March 19, 2012, in the afternoon, she posted a 1 Month Notice to End Tenancy for Cause to the tenant's door. The landlord's brother was present as a witness.

The Notice indicated that the tenant must apply to cancel the Notice within 10 days of receipt and that if he did not apply to dispute the Notice within 10 days he was presumed to have accepted the Notice and that he must move out of the unit by the effective date of the Notice; April 30, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The landlord had initially asked the tenant to leave, rather than issue a Notice. On March 6, 2012, the tenant emailed the landlord stating he would vacate at the end of April. On March 7, 2012, the tenant told the landlord she must issue a proper Notice to end the tenancy. The landlord then issued the 1 Month Notice to end tenancy for cause.

The tenant told the landlord the Notice was not proper and that he would not move out of the unit.

On April 29, 2012, the tenant sent the landlord another email indicating he would not move as the Notice was illegal.

On May 15, 2012, the landlord applied requesting an Order of possession. The landlord has been paid rent, but has been hesitant to approach the tenant to discuss the tenancy. The landlord stated that she had not indicated that this hearing would be cancelled; she expected the tenant to attend.

Analysis

I find that the tenant was served with a 1 Month Notice to End Tenancy for Cause issued on March 19, 2012, by posting to the tenant's door on that date.

The Notice is deemed served to the tenant 3 days after posting; March 22, 2012.

As rent is due on the first day of each month, the Notice was effective on April 30, 2012.

The tenant failed to vacate the unit and was then served with Notice of this hearing; the tenant did not attend the hearing. There was no evidence before me that the tenant disputed the Notice.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.*

As the tenant failed to submit an application to cancel the Notice, I find that the tenant accepted that the tenancy ended on the effective date of the Notice, April 30, 2012. When the tenant refused to vacate, the landlord applied requesting an Order of possession.

The landlord has accepted rent payments; however, the tenant understood a hearing had been set for today's date and he failed to attend the hearing. I find that the intention of

the landlord was clear; that when she served the tenant with Notice of the hearing, she clearly informed the tenant that she wished to have the tenancy end.

Therefore, based on section 47(5) of the Act and section 55(2)(b) of the Act, I find that the landlord is entitled to an Order of possession that is effective 2 days after it is served to the tenant.

Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia 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: June 07, 2012.

Residential Tenancy Branch