



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 a landlord's application for an Order of Possession for cause and breach of an agreement. 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.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord is seeking an Order of Possession based upon an undisputed 1 Month Notice to End Tenancy for Cause (the Notice) posted on the tenant's door on March 6, 2012. The subject Notice has an effective date of April 30, 2012.

The landlord testified that the Notice was posted at 7:47 a.m. on March 6, 2012 by the landlord, in the presence of his wife. The landlord took photographs of the Notice on the rental unit door.

The tenant submitted that that he did not receive the Notice. The tenant explained that he and his family would have been home at 7:47 a.m. since the tenant's son does not leave for school until 8:00 a.m. The tenant was of the position the landlord is fraudulently claiming that he served the Notice in retaliation for filing a claim against the landlord in April 2012 (file no. 790059).

The landlord responded by stating that he did post the Notice on March 6, 2012 but that in any event the tenant also received a copy of the Notice by way of an evidence package the tenant received on April 25, 2012 for file no. 790059. The tenant acknowledged that a copy of the Notice was in the evidence package that he received for the previous hearing but submitted that a copy of a Notice is not valid or enforceable.

Both parties were in agreement that the landlord received rent from the tenant for the month of May 2012. The landlord explained that he waited two months to file this application because he initially thought the tenant was going to comply with the Notice and vacate April 30, 2012. Then, when the tenant did not vacate the landlord accepted the rent for May 2012 and introduced the Notice during the previous dispute hearing held on May 4, 2012. The Dispute Resolution Officer conducting the May 4, 2012 hearing informed the landlord that the Notice to End Tenancy was not the subject of that dispute. The landlord then filed this application.

The landlord provided a copy of the Notice as evidence for this proceeding along with a copy of the tenancy agreement and several photographs of the Notice on the door.

The tenant made a written submission in support of his position that he did not receive the Notice on March 6, 2012; a copy of a 10 Day Notice issued May 2, 2012; the tenancy agreement; the tenant's Application for Dispute Resolution under file no. 790059; and other evidence related to the previous dispute.

The landlord stated that given the date of this hearing he is willing to permit the tenant occupancy until June 30, 2012 provided the tenant pays for use and occupancy for June 2012. The tenant was agreeable to an effective date of June 30, 2012 in the event the landlord's request for an Order of Possession was granted.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy for cause by issuing a 1 Month Notice to End Tenancy for Cause. Section 47 provides that a tenant has 10 days to dispute the Notice after receiving it. If the tenant does not dispute the Notice within 10 days of receiving it the tenant is conclusively presumed to have accepted that the tenancy will end and must vacate the rental unit on the effective date of the Notice.

A Notice to End Tenancy must be served in a manner that complies with section 88 of the Act. Section 88 permits a Notice to be served in many ways, including: by posting it on the door of the rental unit; by mail; and by registered mail. Where service of a Notice comes under dispute the party who served the Notice bears the burden to prove it was served. The burden is based upon the balance of probabilities.

In this case, the posting of the Notice on the rental unit door on March 6, 2012 is under dispute. The landlord's photographs do not indicate when the photographs were taken and are of little evidentiary value in that regard. This leaves me with disputed verbal testimony which I find insufficient to prove service.

I do accept; however, that the tenant received a copy of the Notice in an evidence package received by him via registered mail on April 25, 2012 based upon the tenant's own admission. I do not find any basis in the Act to conclude that a copy of a Notice that is sufficiently completed and duly executed is not otherwise valid or enforceable. I find the copy of the Notice presented to me is sufficiently complete and was executed by the landlord. Therefore, I find the tenant was in receipt of a valid Notice on April 25, 2012.

In light of the above, the tenant had 10 days from April 25, 2012 to dispute the Notice, which he did not. Accordingly, I find the tenant is conclusively presumed to have accepted the tenancy would end and must vacate the rental unit. Since service occurred on April 25, 2012 the effective date is automatically changed to read May 31, 2012 in accordance with section 53 of the Act.

Given the landlord's willingness to permit occupancy until June 30, 2012, I provide the landlord with an Order of Possession effective June 30, 2012. To enforce the Order of Possession it must be served upon the tenant.

The landlord is awarded the filing fee paid for this application. The landlord may recover this award by deducting \$50.00 from the tenant's security deposit.

Conclusion

The landlord's request for an Order of Possession has been granted with an effective date of June 30, 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: May 30, 2012.

Residential Tenancy Branch