



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated May 31, 2012 and purporting to be effective June 30, 2012.

Despite being served by registered mail sent on June 19, 2012, the respondent did not appear.

Issue(s) to be Decided

The issue to be determined on the landlord's application is whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause.

Background and Evidence Notice to End Tenancy

The landlord testified that the One-Month Notice to End Tenancy for Cause dated May 31, 2012 was served on the tenant by registered mail.

However, the landlord was not able to provide the tracking number to verify that the Notice had been served in accordance with the Act.

The landlord had submitted some copies of registered mail receipts, but one pertained to service of the Notice of Hearing sent on June 19, 2012 and the other pertained to service of a document on the tenant sent on May 10, 2012, which was before the One-Month Notice to End Tenancy for Cause was issued. There was no registered mail receipt or tracking slip dated May 31, 2012.

Analysis

Under section 40 of the Act, a landlord may end a tenancy for cause by giving a One-Month Notice to End Tenancy. A notice under this section must end the tenancy effective on a date that is: (a) not earlier than one month after the date the notice is received, and; (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this instance, the landlord issued a One-Month Notice to End Tenancy for Cause on May 31, 2012 purporting to be effective on June 30, 2012 and the landlord testified that the Notice was served in a registered mail package mailed on May 31, 2012.

I note that section 83 of the Act provides that a document sent by mail is deemed to have been served on the 5th day after it is mailed; (my emphasis)

Given the above, I find that a One Month Notice that was mailed on May 31, 2012, would be deemed to have been received on June 5, 2012. Therefore, the earliest date that a Notice served on June 5, 2012, could be effective would be July 31, 2012.

Section 46(2) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the notice is deemed to be changed to be the earliest date that complies with the section. Accordingly, I find that the effective date for the One-Month Notice to End Tenancy for Cause would be changed to July 31, 2012.

However, I find that the landlord still bears the burden of proof to verify that the One-Month Notice to End Tenancy for Cause was properly served on the tenant in accordance with the Act. Although this landlord gave testimony that the tenant was served with the One-Month Notice to End Tenancy for Cause by registered mail, the landlord could not provide the Canada Post tracking number to confirm that the Notice was sent to the tenant on the date claimed and did not submit a copy of the tracking slip showing the date of May 31, 2012..

Given the above, I find that the landlord's application must be dismissed because of the unresolved question that has arisen with respect to the date and proof of service of the One-Month Notice to End Tenancy for Cause dated May 31, 2012.

Conclusion

I hereby dismiss this application with leave to reapply.

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: July 10, 2012.

Residential Tenancy Branch