



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR

Introduction

This hearing dealt with a limited review of an application by the landlord. In the original hearing, the landlord applied for an order of possession pursuant to a notice to end tenancy dated September 4, 2012. The landlord had also applied for a monetary order for unpaid rent. I heard the original application and granted the landlord a monetary order in the amount of \$1975. I denied the landlord's application for an order of possession as there was insufficient evidence when the tenant was served or deemed served with the notice to end tenancy.

The landlord applied for a review of my decision, based on evidence which he had submitted verifying that the notice to end tenancy was sent to the tenant by registered mail on September 4, 2012. The landlord was granted a review hearing, and I conducted the review hearing.

The landlord, the tenant, an advocate for the tenant and a witness for the tenant all participated in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord stated that he sent a notice to end tenancy for unpaid rent to the tenant by registered mail on September 4, 2012. The landlord stated that the tenant received the notice, and then she called the landlord and said that she would be getting the money to pay the rent. The landlord could not recall the date that this occurred. The tenant then did not pay the rent until September 26, 2012.

During the hearing I consulted the Canada Post website and informed the parties that according to Canada Post, the landlord's package was mailed on September 4, 2012 and it was signed for by "Mary X" on September 6, 2012.

The tenant stated that she did not receive the notice to end tenancy until September 26, 2012. She had some people assisting her with unpacking in late August and early September, and one of those people was named Mary; however, the tenant did not receive any package signed for by Mary or another person.

Analysis

I find that the landlord is not entitled to an order of possession pursuant to the notice to end tenancy dated September 4, 2012.

I accept the landlord's evidence that he mailed a package to the tenant by registered mail on September 4, 2012, the same date as the notice to end tenancy. Under the Act, a tenant may be deemed served with registered mail five days after mailing, unless there is clear evidence to the contrary. In this case, the Canada Post website shows that the registered mail was received and signed for by "Mary X" on September 6, 2012. The tenant stated that there may have been a person named Mary at her residence in early September. However, the tenant did not receive the 10 day notice to end tenancy in a registered mail package in early September. I cannot be satisfied, on the evidence, that the person who signed for the registered mail then ensured that the package was provided to the tenant.

Conclusion

I confirm my original decision dated October 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: December 12, 2012.

Residential Tenancy Branch