

DECISION

Dispute Codes: OPC; OPB; FF

Introduction

This is the Landlord's application for an Order of Possession; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent LM testified that she served the Tenant with the Notice of Hearing documents by handing them to the Tenant on November 22, 2012. She stated that she also sent them by registered mail on November 22, 2012 and provided the receipt and tracking number in evidence. The Tenant acknowledged service of the documents, but did not remember on what day he received them.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on January 1, 2006. Monthly rent is \$341.00, due on the first day of each month.

The Landlord provided a copy of the Notice to End Tenancy for Cause issued October 10, 2012 (the Notice). The Landlord's agent LM testified that she served the Tenant with the Notice by registered mail sent on October 10, 2012. The Landlord provided a copy of the registered mail receipt and tracking number in evidence. The Landlord's agent stated that the documents were returned to her, unclaimed.

The Tenant stated that he did not accept delivery of the registered mail because of his work schedule. He testified that whenever he went to the post office to collect the documents, it was closed.

The Tenant acknowledged that he received a copy of the Notice, but does not recall the date that he received it.

The Tenant has not filed an Application to cancel the Notice. His agent testified that she was told by an Information Officer at the Residential Tenancy Branch that such an application was not necessary and that he could simply sign into the Hearing to ask that it be cancelled. The Tenant and his agent left the teleconference at 3:15, before it was concluded.

The Landlord asked for an Order of Possession to be effective January 31, 2013.

Analysis

Based on the testimony and documentary evidence provided, I accept that the Landlord duly served the Tenant with the Notice by registered mail in accordance with the provisions of Section 82(2)(b) of the Act. Section 83 of the Act provides that documents served by registered mail are deemed to be received on the 5th day after they are mailed. The Tenant's failure to accept delivery of the documents does not change the service provisions of the Act.

The Notice indicates that the end of tenancy date is November 15, 2012, which is contrary to Section 40(2) of the Act. However, Section 46(1) of the Act provides that an incorrect end-of-tenancy date is deemed to be changed to the earliest date that complies with the Act. Accordingly, I find that the effective date of the Notice was November 30, 2012.

The Tenant expressed a desire to be heard with respect to the causes alleged on the Notice. Section 59(1) of the Act allows me to extend a time limit established by the Act in **exceptional** circumstances. However, Section 59(3) of the Act provides that I may not extend the time limit to make an application for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the Notice.

Even if I accepted that there were exceptional circumstances for the Tenant not filing an Application to dispute the Notice, which I do not, Section 59(3) of the Act precludes me from allowing an extension of time to file that application.

As explained to the Tenant, pursuant to the provisions of Section 40(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on November 30, 2012. I find that the Landlord is entitled to an Order of Possession, **effective January 31, 2013** as requested by the Landlord's agent.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the **\$50.00** filing fee from the Tenant. I hereby provide the Landlord with a Monetary Order in that amount.

Conclusion

I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., January 31, 2013**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord with a Monetary Order in the amount of **\$50.00** for service upon the Tenant. This Order may be filed in the Provincial 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 *Manufactured Home Park Tenancy Act*.

Dated: December 28, 2012.

Residential Tenancy Branch