



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, FF

Introduction

The Tenant has made an application for more time to be allowed to make an application to cancel a notice to end tenancy issued for Landlord's use of the property and if granted, to cancel a notice to end tenancy issued for unpaid rent or utilities and recovery of the filing fee.

Both parties have attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing and submitted evidence packages, I am satisfied that both parties have been properly served.

It was clarified with both parties that the Tenant's Application would be limited to the original application filed on February 8, 2013 and not that copy submitted with the Tenant's evidence as it has never been filed with the branch for notice of an amended application or properly served on the Landlord.

During the hearing the Landlord has clarified that the 10 day notice to end tenancy issued for unpaid rent is being withdrawn. As such, no further action is required for this portion of the application.

The Landlord made an oral application for an order of possession to end the tenancy.

Issue(s) to be Decided

Is the Tenant entitled to more time to make an application for dispute resolution and if so, Is the Tenant entitled to an order cancelling the 2 month notice to end tenancy issued for Landlord's use?

Is the Landlord entitled to an order of possession?

Background, Evidence and Analysis

Both parties agreed that the Landlord served the 1 month notice to end tenancy issued for Landlord's use dated January 11, 2013 by Canada Post Registered Mail on the same date. The Landlord has stated that the 2 month notice was delivered 3 different ways, posting on the rental unit door, by registered mail and email on January 11, 2013. The Landlord has submitted a copy of the Canada Post Registered Mail Customer Receipt as confirmation. The Landlord argues that the Tenant's Application which was filed on February 8, 2013 is not within the allowed time frame (15 days). The Tenant disputes this stating that the package was picked up on January 25, 2013 as shown by the print out of the on-line tracking system. The Tenant argues that the 15 day period should commence on the next day following receipt of the notice. The Landlord argues that this is not in keeping with the Act. The Tenant has also argued that there have been frequent problems with the Canada Post Delivery of Mail and the on-line tracking system. The Landlord disputes this and has provided a copy of email communication with the Canada Post Supervisor who in the email has confirmed that an attempted delivery was made on January 15, 2013 and a notice card was left and further final notice was confirmed to be delivered on January 25, 2013.

Section 90 of the Residential Tenancy Act states,

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

I find based upon the evidence submitted that the Tenant's have been deemed to have been served by Canada Post Registered Mail on January 16, 2013. I am satisfied based upon the evidence submitted that the Tenant was properly served and that there were no issues regarding Canada Post Service Delivery.

Residential Tenancy Policy Guideline #36 speaks to extending a time period. A Dispute Resolution Officer may extend or modify a time limit established by the Residential Tenancy Act only in exceptional circumstances. A Dispute Resolution Officer may not extend the time limit to apply for dispute resolution beyond the effective date of a notice to end tenancy and may not extend the time within rent must be paid without the consent of the Landlord. "Exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a Dispute Resolution Officer to extend that time limit.

As the notice has been deemed to have been served on January 16, 2013 and the Tenants have failed to make an application within the allowed time frame by making their application on February 8, 2013, I find that the Tenant's have presumed to have accepted that the Tenancy is ending. The Tenant's have provided one detail of a flood that occurred on February 7, 2013, but have failed to provide any details of why the application was not filed in the preceding 12 days after picking up the notice on January 25, 2013. The Tenant's application for more time is denied. The merits of the Tenant's Application were not considered for this decision as such. The 2 month notice to end tenancy for Landlord's use is upheld.

Both parties have agreed that the Landlord provided an effective date on the notice of May 31, 2013.

The Landlord is granted an order of possession for May 31, 2013 at or before 1:00 pm.

Conclusion

The Tenant's Application is dismissed.
The Landlord is granted an order of possession.

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: March 07, 2013

Residential Tenancy Branch

