



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Colliers International
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on March 20, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each respondent via registered mail at the address noted on the Application. Copies of the Canada Post receipts and tracking numbers were provided as proof of service. The mail was not returned to the landlord.

The landlord stated that the female respondent, G.I., passed away in October 2012. She had signed a tenancy agreement; no other person signed as a co-tenant and no other person has paid rent to the landlord. No rent payments have been made since October 2012.

The landlord chose to serve the male respondent with Notice of this hearing; he was sent the hearing package via registered mail and also given a copy, in person, by the building manager. The male respondent did not attend the hearing.

The landlord testified that the male respondent may have been the common-law spouse of the tenant. The male respondent has not signed a tenancy agreement, was not added as a co-tenant to the female respondents tenancy agreement and he has not paid any rent.

In relation to the male respondent, I find that he is an occupant. Residential Tenancy Branch policy defines an occupant as:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Therefore, even though the male respondent was served with Notice of the hearing, he has no rights or obligations in relation to G.I.'s tenancy. The application has been amended to remove the occupant's name.

As G.I. has deceased I find, for the purposes of an application requesting an Order of possession, that the landlord has served the Estate of the tenant, to the rental unit address and that the registered mail is deemed served on the 5th day after mailing. The application has been amended to include the tenants Estate. I find it is reasonable that the Estate would be in receipt of any mail sent to the tenant's rental unit address.

The landlord withdrew the request for a monetary Order.

Order of Possession

The evidence before me indicated that a 10 Day Notice to End Tenancy was given to the occupant of the unit on March 12, 2013. There was no evidence before me that the occupant paid rent or that he disputed the Notice. Therefore, I find that the Estate of the tenant was sufficiently served with the 10 Day Notice, to an adult who resided in the home possessed by the Estate.

The Notice was effective on March 12, 2013.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to March 22, 2013.

Therefore, as the tenant's Estate was served with Notice to end the tenancy to an adult who resided in the rental unit as an occupant of the Estate, I find that the Estate was sufficiently served with the 10 Day Notice to End Tenancy. Therefore, I find that the Notice to end tenancy was effective on March 22, 2013 and that the landlord is entitled to an Order of possession.

There was no evidence before me that the tenant's Estate had paid the rent or disputed the Notice. Therefore, the Estate is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice, pursuant to section 46(5) of the Act; March 22, 2013.

The landlord supplied a copy of the tenant ledger showing that rent was paid in October 2012, and that no further rent payments were made.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant's Estate**. This Order may be served on the tenant's Estate, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the tenant's Estate has yet to vacate the unit the landlord will continue to hold the deposit in trust; it will be disbursed in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 17, 2013

Residential Tenancy Branch