



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing was convened in response to the landlord's application seeking an Order of Possession based on a Notice to End Tenancy given for landlord's use and for recovery of the filing fee paid for this application.

Both parties attended the hearing and gave evidence under oath and affirmation.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and recovery of the filing fee?

Background and Evidence

The written Tenancy Agreement shows that this month-to-month tenancy began on November 17, 2012. Rent was fixed at \$950.00 per month payable in advance on the first day of each month.

The landlord served the tenants with a Notice to End Tenancy for Landlord's Use of Property dated April 30, 2013 effective July 1, 2013. The landlord testified that he served the Notice by way of posting it to the rental unit door. The landlord testified that at 12:29 a.m. on Wednesday May 1, 2013 he received an email from the tenants confirming that they had discovered the Notice to End Tenancy posted to their door. The landlord says that he had previously discussed the issue of ending the tenancy with the tenants by way of email so they were aware of his intentions.

The tenants acknowledge receiving the Notice to End Tenancy on May 1, 2013. The tenants did not dispute the Notice however they say having been served by way of posting on May 1, 2013 the effective dates on the Notice must be changed to July 31, 2013 not July 1, 2013 as stated in the Notice.

Analysis

The tenants did not dispute the Notice to End Tenancy and the time for doing so has now expired. The landlord is therefore entitled to an Order of Possession. As the effective date on the Notice has not passed, the Order shall stipulate that this tenancy shall end on the effective date.

In determining whether the effective date currently set is the proper date upon which this tenancy will end, I must first refer to Section 49 of the *Residential Tenancy Act* which states as follows:

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(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, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(emphasis added)

This means that where a Tenancy Agreement stipulates that rent is payable on the first of each month, any Notice to End Tenancy must be served, at the latest, the day before the rent is due. In this case the evidence shows that rent is due on the first of the month, the evidence also shows that the landlord served the Notice on April 30, 2013 by way of posting the Notice to the rental unit door. Section 90 of the Act states that documents given or served in accordance with Sections 88 or 89 are deemed to be received as follows:

(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;

This means that even if the tenant had not acknowledge receiving the Notice on May 1, 2013 the Act would have deemed that she received it on May 4, 2013, either date being too late for service of a Notice that is intended to become effective July 1, 2013.

However the Act does provide for incorrect effective dates to be automatically changed under Section 53 of the Act:

Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find therefore that the earliest date that this Notice may take effect in order to comply with the Act is July 31, 2013.

I will therefore issue an Order of Possession effective July 31, 2013.

Because the tenants did not dispute the landlord's notice and the effective date was automatically corrected under the Act, I decline to order the tenants to reimburse the landlord for the fees he has paid for this application because I find that this application was unnecessary.

Conclusion

The landlord is provided with a formal copy of an Order of Possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

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: June 13, 2013

Residential Tenancy Branch