



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, FF, CNR, MNDC, ERP, RP

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord applied for an Order of Possession for cause and for a breach of agreement by the tenant, and applied to recover the cost of the application from the tenant. The tenant applied; to cancel a notice to end tenancy for unpaid rent or utilities; for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the 'Act'), regulation or tenancy agreement; for the landlord to make emergency repairs for health and safety reasons and make repairs to the unit, site or property.

At the start of the hearing the landlord withdrew the portion of the application relating to a breach of an agreement by the tenant as this issue was addressed by the landlord's application for an Order of Possession for cause.

The landlord appeared for the hearing with an agent and gave affirmed testimony as well as providing a copy of the notice to end tenancy for cause. The landlord served the tenant with a copy of the application and Notice of Hearing documents by registered mail. The tenant confirmed receipt of the hearing documents by mail and based on this and the Canada Post tracking number provided by the landlord, I find that the landlord served the tenant as per the requirements of the *Residential Tenancy Act*.

The tenant appeared for the hearing to give affirmed testimony but failed to provide a copy of the notice to end tenancy for unpaid rent and utilities he was requesting to be cancelled. The tenant testified that he tried to serve the landlord with a copy of his application and Notice of Hearings documents within the time limits stipulated but the landlord was not willing to be available for service in person and as a result, the tenant testified that he left them in the landlord's mail box. However, the landlord denied receiving any paperwork from the tenant relating to the tenant's application for dispute

resolution. Section 89 of the *Act* provides instructions for the methods of service relating to hearing documents after making an application for dispute resolution. As a result, I find that leaving them in the landlord's mail box is not considered proper service under the *Act* and I dismiss the tenant's application.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The landlord testified that the tenancy started on April 4, 2013 on a month to month basis and the landlord collected a security deposit from the tenant on the same day in the amount of \$700.00. A signed written tenancy agreement was completed and rent in the amount of \$1,400.00 is payable by the tenant on the first day of each month.

The landlord's agent testified that the landlord had become aware that the tenant was growing illegal marijuana plants inside the rental suite. As a result, the landlord and the landlord's agent both testified that they attended the rental suite on September 10, 2013 and served the tenant with a 1 Month Notice to End Tenancy for Cause which was dated August 30, 2013 by posting it to the tenant's door. This notice to end tenancy was provided as evidence for the hearing by the landlord with an expected date of vacancy of September 30, 2013, and listed two reasons for ending the tenancy:

- The tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, and
- The tenant or person permitted in the property by the tenant has seriously jeopardised the health or safety or lawful right of another occupant or the landlord.

The landlord now seeks an Order of Possession based on this notice to end tenancy.

The tenant testified that he had been issued two notices for unpaid rent and utilities by the landlord for which he had paid rent. However, it was explained to him that the landlord's application was based on a notice to end tenancy for cause and not for unpaid rent.

When the tenant was asked about the service of the notice to end tenancy for cause dated August 30, 2013, the tenant testified that the landlord and his agent for this hearing, attended his rental suite on September 10, 2013 and tried to serve him with a

notice. The tenant testified that they knocked on his door at which point his dog started to bark. When he opened the door he saw that there was a notice taped to his door which he immediately removed, ran after the landlord and his agent and gave it back to them during a verbal altercation between them. The tenant testified that he did not dispute the notice because he was not served with it and that he had paid the rent.

The landlord testified that during the verbal altercation they had told the tenant they were ending the tenancy because of marijuana plants he had and that he needed to have special permission from the city to have them.

Analysis

In my analysis of the 1 Month Notice to End Tenancy for Cause I find that it was completed on the correct form and contained the correct content as required by the *Act*.

Section 88 of the *Act* states that a person may serve a document by attaching a copy to the door. The tenant denied being served the notice to end tenancy for cause. However, I find that the landlord had served the notice to the tenant by attaching it to the tenant's door and that the tenant received this on September 10, 2013. I find that it is not sufficient for the tenant to pull off a notice attached to his door and immediately return it to the landlord to negate being served. The landlord explained to the tenant that the notice was one which intended to end his tenancy and I find that the tenant was required to follow a course of action to dispute the notice as required by the *Act*.

Section 48(5) of the *Act* states that when a tenant receives a notice to end tenancy for cause the tenant has 10 days to dispute the notice after receiving it. Section 48(6) states that if the tenant does not make an application within the 10 day time period, the tenant is conclusively presumed to have accepted the tenancy ends on the effective day of the notice.

As a result, I find that the tenant had until September 20, 2013 to make an application to dispute this notice which the tenant failed to do. Therefore, I accept the evidence before me that the tenant failed to dispute the notice **within** the 10 days granted under the *Act* and I find that the tenant is conclusively presumed under Section 48(6) of the *Act* to have accepted that the tenancy ended on effective day of the notice.

As the notice was received by the tenant on September 10, 2013, I find that the effective date of the notice is automatically changed to October 31, 2013 pursuant to Section 53 of the *Act*.

As the landlord has been successful in this matter, I also award the landlord the \$50.00 filing fee for the cost of the application which the landlord may deduct from the tenant's security deposit pursuant to Section 72(2) (b) of the *Act*.

Conclusion

For the reasons set out above, I dismiss the tenant's application and I grant the landlord an Order of Possession which is effective on **October 31, 2013 at 1:00 p.m.** This order may then be filed and enforced in the Supreme Court 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 *Residential Tenancy Act*.

Dated: October 28, 2013

Residential Tenancy Branch

