



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0784389 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – OPC

For the tenant – CNC, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for cause. The tenant applied to cancel the Notice to End Tenancy for cause, to recover the filing fee paid for this application from the landlord and other issues.

The hearing went ahead as scheduled however the tenant failed to dial into the hearing during the conference call. Therefore, no hearing took place regarding the tenant's application. As the tenant has failed to present the merits of their application the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 12, 2013. Mail receipt numbers were by the landlord's agents in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord's agents testify that this tenancy started on October 01, 2008. Rent for this unit is \$1,000.00 per month and is due on the first day of each month.

The landlord's agent testifies that the tenant has been repeatedly late paying rent in August, 2012 and in January, August and November, 2013. The tenant's rent cheques were all returned NSF. The landlord's agent testifies that they have not served the tenant with any 10 Day Notices to End Tenancy however they served the tenant with a One Month Notice to End Tenancy for repeated late rent payments on November 14, 2013 by registered mail. The landlords have provided a copy of the Canada Post tracking numbers in evidence. The landlord's agent testifies that the tenant claimed she did not receive this Notice however the tenant was residing at the unit when the Notice was sent by registered mail and was therefore the tenant has the reasonability to collect her mail.

The landlord has provided a copy of the 10 day Notice in documentary evidence. This Notice has an effective date of December 31, 2013. The landlord's agent testifies that the tenant has continued to reside in the rental unit although did go to stay at a shelter for a day.

The landlords seek an Order of Possession effective as soon as possible.

Analysis

The landlord served the tenant with a One Month Notice to End Tenancy on November 14, 2013. As this Notice was sent by registered mail it is deemed to have been served five

days after it was posted on November 19, 2013 pursuant to s. 90 of the *Act*. Therefore the tenant had 10 days from November 19, 2013 to file her application to dispute the landlords One Month Notice. The tenant filed her application on December 23, 2013; 34 days after being deemed to have received the Notice.

I have carefully considered all the evidence before me; section 66(1) of the *Residential Tenancy Act* states:

Director's orders: changing time limits, and provides in part as follows:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) [starting proceedings] or 81(4) [decision on application for review].

As the tenant has been unable to demonstrate any exceptional circumstances as to why her application was not filed within the allowable 10 days after receiving the Notice to End Tenancy and has not attended the hearing to state the case on her application I must dismiss the tenant's application to set aside the One Month Notice to End Tenancy for cause.

The landlord is therefore entitled to an Order of Possession.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **Two (2) days** after service upon the tenant. This Order must be served on the tenant and may be filed in the Supreme Court 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 *Residential Tenancy Act*.

Dated: February 03, 2014

Residential Tenancy Branch

