



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession for cause.

The landlord provided affirmed testimony that on January 24, 2014, in the afternoon, the landlord posted the hearing documents to the tenant's rental unit door. An envelope, one for each tenant, was attached to the door.

On January 27, 2014 the landlord posted an amended application to the door of the rental unit. An envelope, one for each tenant, was attached to the door. Service occurred at approximately 3:30 p.m.

Both landlords' were present on January 24 and 27, 2014.

Therefore, pursuant to section 89 of the Act, I find that the tenant's have each been served with Notice of this hearing and the amended application. In accordance with section 90 of the Act, service of the initial application was completed effective January 27, 2014 and the amended application was served to each tenant effective January 30, 2014.

Neither tenant attended the hearing.

Preliminary Matters

The application was initially made requesting an Order of possession based on an early end to the tenancy. The landlord realized they had made an error and were directed to amend the application. The application was amended to request an Order of possession based upon a 1 month Notice to end tenancy for cause issued on December 22, 2013.

On January 30, 2014 the landlord was able to serve only the male tenant with the evidence; a copy was given to the male tenant, for the female. Service occurred at the rental unit, at 7 p.m. Both landlords were present; they handed the evidence to the tenant. The landlord was not able to say that the female tenant was given the evidence. Therefore, to ensure fairness, the application has been amended to name the male tenant only; who I find was given the evidence.

Background and Evidence

The tenancy commenced at the end of September 2013. Rent is due on the 1st day of each month.

On December 22, 2013 a 2 month Notice ending tenancy for cause was taped to the tenant's door. Service occurred in the afternoon, with both landlords present.

The landlord testified that on a 1 Month Notice to End Tenancy for Cause was served to the tenants, by posting to the rental unit door, in the afternoon. Both landlords' were present.

The Notice indicated that the tenants must apply to cancel the Notice within 10 days of receipt. The Notice indicated that if the tenants did not apply to dispute the Notice within 10 days the tenants were presumed to have accepted the Notice and that he must move out of the unit by the effective date of the Notice; February 1, 2014.

The reasons stated for the Notice to end tenancy were that the tenants had significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The landlord testified that the tenants have now signed a mutual agreement to end the tenancy effective February 15, 2014, at 1 p.m. The landlord accepted rent payment to that date, based on the tenant's written agreement to vacate. The landlord requested an Order of possession for February 15, 2014, at 1 p.m.

Analysis

In the absence of the tenants, who were served with Notice of this hearing, I find that the tenant's were given a 1 month Notice to end tenancy effective December 25, 2013. The Notice is deemed served on the 3rd day after posting.

There was no evidence before me that the tenants applied to dispute the Notice.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.*

As the tenants failed to submit an application to cancel the Notice, I find that the tenants accepted that the tenancy ended on the effective date of the Notice, February 1, 2014. When the tenants refused to vacate, the landlord applied requesting an Order of possession.

Therefore, based on section 47(5) of the Act and section 55(2)(b) of the Act, I find that the landlord is entitled to an Order of possession. The Notice is effective 2 days after service to the tenants, but, as the landlord has indicated the parties have reached agreement, I find that the Notice is effective no earlier than February 15, 2014 at 1 p.m. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord is entitled to 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: February 06, 2014

Residential Tenancy Branch

