



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COQUITLAM KINSMEN HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession based on a notice to end tenancy for cause and to recover the filing fee.

An agent for the Landlord and a witness who served the notice to end tenancy appeared for the Landlord and provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing. The Tenant appeared for the hearing and gave affirmed testimony during the hearing but provided no documentary evidence prior to the hearing.

The Landlord’s agent testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents by registered mail on April 10, 2014. The Canada Post tracking number was provided as evidence for this method of service. The Tenant confirmed receipt of the hearing documents and I accept the Landlord served the Tenant as required by the Act.

At the start of the hearing the Landlord’s agent and Tenant consented to amending the Application to include the correct spelling of the Tenant’s last name.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

- Did the Landlord serve the notice to end tenancy under the provisions of the Act?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy started on August 1, 2012 on a month-to-month basis. A signed written tenancy agreement was completed and rent in the amount of \$546.00 is payable by the Tenant on the first day of each month. The Landlord collected a security deposit from the Tenant on August 1, 2012 in the amount of \$400.00.

The Landlord's agent and witness testified that the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "Notice") on March 25, 2014 by registered mail. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service as well as a copy of the Notice. The Notice shows an expected move out date of April 30, 2014 and states the reasons for ending the tenancy is because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord provided three witness statements as documentary evidence to support this reason to end the tenancy.

The Tenant testified that he had not received the Notice but was aware that there was something in his mail box that informed him that there was mail for him to pick up at the Post Office, which he had not got around to picking up. When the deeming provisions of Section 90 of the Act (also detailed below) were explained to the Tenant, the Tenant submitted that the Landlord should have made him aware that this was an important document for him to receive and maybe at that point he would have collected the package which contained the Notice.

The Tenant was given an opportunity to explain his experience of the tenancy and testified that he and his family were not happy in this tenancy. The Tenant testified that he does not agree with the notice to end tenancy and submitted that he is being discriminated against by the Landlord and the Landlord has been making false allegations of him smoking marijuana in the rental suite. The Landlord's agent requests an Order of Possession as the tenancy is not working.

Analysis

I have examined the Notice and I find that it was completed with the correct information on the approved form as required by Section 52 of the Act. I also find that the effective date on the Notice is correct in accordance with Section 48(3) of the Act, which allows for one clear rental month before the Notice becomes effective.

Section 90(a) of the Act states that a document served by registered mail is deemed to have been received five days after it is mailed. The Landlord provided documentary

evidence to show that the Notice had been registered mailed to the Tenant on March 25, 2014. The Tenant had failed to pick the mailed Notice and I find that a party cannot avoid service of a document by refusing or delaying the picking up of mailed documents, especially when the Tenant had been notified that there was mail waiting for him to pick it up at the Post Office. This is the reason why the Act allows for the deeming provisions. As a result, I find the Tenant was deemed to have received the Notice on March 30, 2014 pursuant to the deeming provisions of the Act.

Section 48(5) of the Act allows a Tenant to dispute a Notice by making an Application within ten days of receiving the Notice. Therefore, based on the deeming provisions above, the Tenant had until April 11, 2014 to make the Application, which he did not. Section 48(6) of the Act states that if a Tenant fails to make an Application within ten days, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date.

Therefore, as the Tenant failed to make an Application under the time limits stipulated by the Act, the tenancy will end on April 30, 2014 which is the effective date of the Notice. As a result, the Landlord's request for an Order of Possession is granted. Since the Landlord has been successful in this Application, I also grant the \$50.00 filing fee to the Landlord for the cost of having to make this Application.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession which is effective at 1:00 p.m. on April 30, 2014. This order must be served onto the Tenant and may then be filed and enforced in the Supreme Court as an order of that Court.

I also allow the Landlord to deduct \$50.00 from the Tenant's security deposit for the filing fee, pursuant to Section 72(2) (b) of the Act.

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: April 22, 2014

Residential Tenancy Branch

