



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent.

The landlord provided affirmed testimony that on May 14, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail to the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service. The landlord provided a copy of the envelope, marked by Canada Post as unclaimed. The tenant continues to reside in the rental unit.

Refusal to claim registered mail does not allow a party to avoid service. Therefore, I find that these documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Background and Evidence

The tenancy commenced on January 1, 2010; rent is \$850.00 due on the 1st day of each month. A security deposit in the sum of \$425.00 was paid. A tenancy agreement was signed with the tenant.

The landlord stated that on May 2, 2014 a 10 day Notice ending tenancy for unpaid rent which had an effective date of May 12, 2014 was served by posting to the tenants door and personal delivery. Service occurred at approximately 3 p.m. with the landlord's spouse present as a witness. On May 3, 2014 the landlord sent a copy of the Notice to the tenant's rental unit address, via registered mail. A copy of the registered mail receipt was provided as evidence of service.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,700.00 within 5 days after the tenant was assumed to have received the

Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The tenant did not pay April 2014 rent. She met with the landlord and had the cash, but took the receipt the landlord disused and did not give him the cash. The tenant has not paid any rent since March, 2014.

At the end of the hearing the landlord was told that it appeared he was entitled to an Order of possession but that I would first consider his testimony and then issue a final decision after the hearing. The landlord then said he was unhappy with the outcome and that he felt I was biased toward the tenant; as she had not disputed the Notice. The landlord could not explain why he felt my intention to issue a final decision after the hearing showed bias for the tenant; particularly as he was told he would likely receive the Order of possession. I explained that he had given testimony, as required, and that even though he had given the tenant and the Residential Tenancy Branch documents, he was required to answer questions during the hearing. I explained that the evidence might support his testimony, but that questions were still required in order to establish the facts and confirm details.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Section 90 of the Act also stipulates that a document given personally is deemed served on the day of personal delivery and that service by registered mail is deemed served on the 5th day after mailing. Therefore, I find that the tenant received the Notice to end tenancy on May 2, 2014; the date of personal delivery; again on May 5, 2014, the date posting to the door was effective and on May 7, 2014, the 5th day after mailing.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on May 2, 2014, I find that the earliest effective date of the Notice is May 12, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on May 12, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay all of the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; May 12, 2014.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, 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 final and binding on the parties, unless otherwise provided under the Act, and 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: July 07, 2014

Residential Tenancy Branch

