



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with an application by the landlords for an order of possession and to recover their RTB filing fee.

Both the tenant and three representatives of the landlord attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

According to the tenancy agreement signed by the parties on October 25, 2013, the tenancy started November 1, 2013. At that time, the tenant paid a security deposit of \$490.50.

The landlords gave evidence that they served the tenant with a notice to end tenancy for cause (the "Notice") by personally handing the Notice to an adult male who answered the tenant's door on the morning of June 3, 2014. The landlords' evidence is that the adult male provided his first name, said the tenant was sleeping, and said he was her fiancé. The landlords gave evidence that the adult male told them the Notice had already been received, and the landlords explained that a different notice to end tenancy had been served on the tenant earlier. The Notice specifies a move-out date, or effective date, of July 31, 2014.

The tenant's evidence is that she did not receive the Notice. She says she only became aware of the hearing because the building manager mentioned it to her the day before.

She does not remember specifically whether the man who was served the Notice was present in her rental unit on June 3rd, because “he comes and goes all the time.”

It is the tenant’s evidence that the man does not live with her. He was incarcerated until the end of March 2014 and then moved to a halfway house. Initially, he was only able to visit her home twice a week, then this was increased to three times a week, and now he is able to visit daily. However, she said he is required to sleep at the halfway house, and just visits her during the daytime.

The two representatives of the landlord who served the Notice said they were under the impression that the man in question resides with the tenant. They had both seen him there frequently prior to the Notice being served.

The property manager gave evidence that he saw the man at the rental building “about 3 or 4 times a week” during the month of April, and on an almost daily basis around the time the Notice was served. The property manager’s evidence is that the surrounding residents say that the man lives in the tenant’s rental unit. He said the man was “constantly there” and for that reason the landlords assumed he was an occupant of the rental unit. He said they would not have given the man the Notice if they did not think he lived there; they would instead have asked him to wake the tenant up so they could give her the Notice.

Analysis

Section 88 provides that all documents, other than those referred to in section 89 [which does not apply here], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways: ...

(e) by leaving a copy at the person’s residence with an adult who apparently resides with the person;

At issue is whether the landlords had a reasonable basis for believing that the adult male who answered the tenant’s door on June 3, 2014 resided with the tenant.

I find that it was reasonable for the landlords to believe that the adult male to whom they gave the Notice resides with the tenant. The landlords and other residents saw the man at the rental unit frequently for a two month period prior to the Notice, the man identified himself as the tenant’s fiancé, he answered the door of the rental unit and was present in the rental unit while the tenant was sleeping, he was aware of the previous notice to end tenancy; these are all factors that would reasonably cause the landlords to believe

he was an occupant of the rental unit. The landlord had no reason to be aware that the man was a resident of a halfway house. In any case, residing at a halfway house does not, in my view, preclude an individual from also being a resident elsewhere. I find the landlords served the Notice by leaving it at the tenant's residence with an adult who apparently resided with the tenant, in keeping with Section 88(e). I therefore find that the Notice was properly served, and the tenant is deemed to have received the Notice on June 3, 2014.

The tenant did not apply to dispute the Notice within 10 days after June 3, 2014. According to Section 47(5), if a tenant does not apply to dispute a notice to end tenancy for cause within 10 days after receipt, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The landlord is therefore entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The landlords are also entitled to recover their RTB filing fee of \$50.00. **I order the landlords to retain \$50.00 from the tenant's security deposit to recover the RTB filing fee.** The balance of the security deposit is to be dealt with according to the provisions of Section 38.

Conclusion

I grant the landlords an order of possession. The landlords are also entitled to retain \$50.00 from the tenant's security deposit.

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: July 09, 2014

Residential Tenancy Branch

