



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated September 30, 2014 and purporting to be effective October 31, 2014 31, 2012.

Despite being served by registered mail sent on November 6, 2014, the tenant did not appear. The landlord verified the service by providing the Canada Post Tracking number.

Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause?

Background and Evidence Notice to End Tenancy

The landlord testified that the tenant was issued a One-Month Notice to End Tenancy for Cause by posting it on the tenant's door on September 30, 2014. Under the Act, a document that is posted is deemed to be served in 3 days. Therefore I find that the 1-Month Notice to End Tenancy for Cause dated September 30, 2014, was deemed to be served on the tenant on October 2, 2014.

The landlord testified that the tenant did not file an application for dispute resolution to dispute the 1-Month Notice to End Tenancy for Cause. The landlord testified that the tenant has not vacated the rental unit and the landlord seeks an order of possession.

Analysis

Section 47 of the Act states that a landlord can end the tenancy for one or more of the causes listed in section 47. However, a Notice served under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

A notice under this section must also comply with section 52 *[form and content of notice to end tenancy]*.

Section 53 of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the notice is deemed to be changed to comply with the Act.

Subsection 53 (2) of the Act provides that, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In the case of a One-Month Notice to End Tenancy for Cause under section 47, if the effective date stated in the notice is any day other than the day before the day in the month, that rent is due under the tenancy agreement, then the effective date is deemed to be changed to be the day before the day rent is due, plus compliance with the required one-month notice period.

In this case, I find that, although the landlord posted the 1-Month Notice to End Tenancy for Cause before the end of September, under section 90 of the Act, it is deemed not to have been received until October 2, 2014.

Therefore I find that the earliest date that the tenancy can be ended under section 47 of the Act for a Notice (deemed) received in October 2014, would be November 30, 2014.

The Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 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.

In this instance, the tenant failed to make an application to dispute the One-Month Notice. Therefore I find that, under the Act, an Order of Possession must be issued in favour of the landlord based on the One-Month Notice.

I hereby grant the landlord an Order of Possession effective November 30, 2014. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that this amount may be retained from the tenant's security deposit. The remaining deposit must be administered in compliance with section 38 of the Act.

Conclusion

The landlord is successful in the application and is granted an Order of Possession based on the One Month Notice to End Tenancy for Cause and is ordered to retain the \$50.00 cost of the application 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: November 20, 2014

Residential Tenancy Branch

