



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes opc

Introduction

The landlord applies for an Order of Possession.

Issues to Be Decided

- Was the one month Notice of End of Tenancy received by the tenant?
- Should an Order of Possession be granted?

Background and Evidence

The landlord provided evidence that on October 27, 2014, he posted a one month Notice to End Tenancy for cause on the tenant's door, to end this tenancy effective November 30, 2014.

The tenant denies that he ever received this notice, although he acknowledges having found different notices on his door in the past.

Analysis

Section 90 of the Residential Tenancy Act provides that a document (in this case the Notice to End Tenancy) that was served by attaching it to the tenant's door is deemed to be received on the 3rd day after it is attached. This deeming provision is rebuttable however, and in this case I accept on a balance of probabilities that the Notice was not actually received by the tenant. There is no evidence of anyone seeing the tenant remove the Notice from the door, no evidence of the Notice being in the tenant's suite thereafter, and no evidence of any discussions as between the landlord and tenant that might confirm the tenant had in fact received the Notice. In short, I accept the tenant's testimony that he did not receive it, and accordingly would not have had opportunity to dispute the Notice.

As stated in section 47(5) of the Act, it is a tenant who has received (my emphasis) the Notice of the ending of a tenancy that must vacate the premises, if no application to dispute the notice is filed. It follows that as receipt of the Notice is not proven in this case, no Order of Possession can be granted.

The landlord's claim for an order of Possession is therefore dismissed.

Conclusion

The landlord's claim for an Order of Possession is dismissed.

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: December 15, 2014

Residential Tenancy Branch

