



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

On April 10, 2015 the tenants applied for more time to cancel a 1 month Notice to end tenancy for cause issued on March 31, 2015.

On April 14, 2015 the landlord applied requesting an Order of possession, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee cost.

The landlord provided affirmed testimony that on April 14, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the application. A Canada Post tracking number was provided as evidence of service to each tenant. The registered mail was returned to the landlord marked by Canada Post as unclaimed.

A failure to claim registered mail does not allow a party to avoid service and does not form the basis for review consideration.

Therefore, I find that the landlord's hearing documents are deemed served to each tenant effective April 15, 2015 in accordance with section 89 and 90 of the Act. Neither tenant attended the hearing.

Preliminary Matters

The landlord said that when they submitted their application for dispute resolution on April 14, 2015 they were not made aware of the tenant's application that was submitted on April 10, 2015. The landlord's testified that they were not served with Notice of the tenant's hearing.

The landlord withdrew the monetary claim.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on a one month Notice to end tenancy for cause issued on March 31, 2015?

Background and Evidence

The tenancy commenced on November 15, 2013. The landlord is holding a security deposit in the sum of \$375.00.

On April 10, 2015 the tenants applied requesting more time to dispute the Notice, which included two reasons:

- that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The Notice indicated that the tenants must apply to cancel the Notice within 10 days of receipt and that if the tenants did not apply to dispute the Notice within 10 days the tenants were presumed to have accepted the Notice and that they must move out of the unit by the effective date of the Notice; April 30, 2015.

Analysis

The tenants applied to dispute the Notice but failed to attend the hearing in support of their application. I find, based on the affirmed testimony of the landlord's that the tenants failed to pursue their application by serving the landlord with Notice of their hearing and attending the hearing.

Therefore, pursuant to section 62(4)(c) of the Act that the tenant's application is dismissed.

The tenants have failed to vacate the unit. They were each served with Notice of the landlord's hearing. The tenants failed to attend the hearing.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section 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.*

As the tenants application is dismissed and they failed to attend the hearing in response to the landlord's application I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, April 30, 2015.

Therefore, based on section 47(5) and 55 of the Act, I find that the landlord is entitled to an Order of possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord may deduct the \$50.00 filing fee from the \$375.00 security deposit held in trust. The deposit value is now \$325.00.

Conclusion

The landlord is entitled to an Order of possession.

The landlord may deduct the \$50.00 filing fee from the security deposit.

The tenant's application is dismissed.

This decision is final and binding 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: May 27, 2015

Residential Tenancy Branch

