



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC

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 based on a one month Notice ending tenancy for cause issued on May 2, 2015.

The landlord provided affirmed testimony that the hearing documents and evidence were served to the tenant by posting to the tenants' door on the afternoon of July 14, 2015. The documents remain on the tenants' door.

The tenant has been paying his rent, via a third party but has not been seen at the rental unit since January 2015. The tenants' electronic key pass has not been used on the building entry door or the tenants' rental unit door. The tenant has been reported to the police as missing and the police are seeking the tenant for other reasons. The government agency that pays the rent has been informed of the tenants' apparent absence; the rent continues to be paid.

I have considered section 89(2) of the Act in relation to service of the hearing documents.

Special rules for certain documents

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;***
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

(3) A notice under section 94.21 [notice of administrative penalty] must be given in a manner referred to in subsection (1).

Even though the tenant has not been seen at the rental unit or used his key, the landlord confirmed that the tenant could enter the building with another person and could have seen the documents on his door. There is no question that the tenant has legal possession of the rental unit as rent is being paid.

Therefore, pursuant to section 90(c) of the Act, I find the tenant is deemed served with the hearing documents effective July 17, 2015.

Background and Evidence

The tenancy was signed on November 19, 2013. Rent is due on the first day of each month.

The landlord testified that a one Month Notice to End Tenancy for Cause was issued and posted to the tenants' door on May 2, 2015. The previous agent for the landlord posted the Notice, which remains on the tenant's door.

The Notice indicated that the tenant must apply to cancel the Notice within 10 days of receipt and that if the tenant did not apply to dispute the Notice within 10 days the tenant was presumed to have accepted the Notice and must move out of the unit by the effective date of the Notice; June 5, 2015. On July 14, 2015 the landlord applied requesting an Order of possession.

The reasons stated for the Notice to End Tenancy were that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable period of time after written notice to do so.

Analysis

As the tenant has legal possession of the rental unit I find pursuant to sections 89 and 90 of the Act that the tenant is deemed served with the 1 month Notice to end tenancy effective May 5, 2015; the third day after the Notice was posted to the door.

The tenant failed to vacate the unit and was then served with Notice of this hearing; the tenant did not attend the hearing. There was no evidence before me that the tenant disputed the Notice.

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.*

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to June 30, 2015.

As the tenant failed to submit an application to cancel the Notice, I find that the tenant accepted that the tenancy ended on the effective date of the Notice, June 30, 2015.

The landlord has accepted rent payments; however, there has not been any contact with the tenant that would indicate the landlord has waived their right to rely on the Notice. I find that the intention of the landlord was clear; that when the landlord served the tenant with Notice of the hearing, the landlord clearly informed the tenant that they wished to have the tenancy end.

Therefore, based on section 47(5) of the Act and section 55(2)(b) 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 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 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: September 16, 2015

Residential Tenancy Branch

