



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TONY CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing was scheduled to deal with cross applications. A tenant's application was filed by a person on the tenant's behalf, referred to by initials NM, requesting cancellation of a 1 Month Notice to End Tenancy for Cause. A landlord's application was filed seeking an Order of Possession for cause. Only the landlord appeared at the hearing.

The tenant's application did not correctly name the landlord as it appears on the Notice to End Tenancy and I amended the tenant's application to correctly identify the landlord.

The landlord acknowledged receiving the tenant's Application and confirmed that the landlord was prepared to respond to the tenant's application. Since there was no appearance by the tenant or a person on her behalf, I dismissed the tenant's application. The landlord orally requested an Order of Possession.

The landlord's application was sent to the tenant at the rental unit address by way of registered mail on September 21, 2014. The registered mail was picked up on September 24, 2015 and the signature is consistent with that of NM. The landlord provided a copy of the registered mail receipt, including tracking number, as proof of service.

The landlord explained that the tenant had left for an extended holiday approximately five months ago and just before leaving she informed the building manager that her mail would be picked up for her. However, it became apparent that the landlord's grandson, NM, was living in the rental unit along with his mother. The landlord testified that the tenant has recently returned from her holiday.

Section 90 of the Act deems a person be served with documents five days after mailing. In this case, the registered mail that was sent to the tenant was delivered to a person apparently residing at the rental unit. I am also satisfied that the mail was delivered to a

person to whom she had authorized to pick up her mail. Therefore, I deemed the tenant sufficiently served with the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant is required to pay rent on the 1st day of every month and the tenancy agreement prohibits the tenant from subletting the rental unit without prior consent of the landlord, in writing. On August 3, 2015 the landlord posted a 1 Month Notice to End Tenancy for Cause on the door of the rental unit and placed another copy in the mail slot in the door of the rental unit (the Notice). The Notice has a stated effective date of September 4, 2015. A tenant's application was filed on September 10, 2015 indicating the subject Notice was received on August 5, 2015. The tenant's application has been dismissed as described previously in this decision.

The landlord requested an Order of Possession effective November 30, 2015 in recognition that rent was paid for November 2015.

Analysis

Where a landlord wishes to end a tenancy for cause, the landlord is required to serve the tenant with a 1 Month Notice to End Tenancy for Cause. In this case, such a Notice was posted on the door and put in the mail slot of the rental unit door on August 3, 2015. Section 90 of the Act deems it to be received by the tenant three days later unless there is evidence to the contrary. In this case, the tenant's application indicates the Notice was received on August 5, 2015. Therefore, I find the Notice was received on August 5, 2015 by the tenant or a person authorized to receive the tenant's mail.

Upon review of the subject Notice, I find that it has an incorrect effective date and should have read September 30, 2015 based upon the requirements of the Act. Under section 53 of the Act, the Notice is not invalidated but automatically changes to comply. Therefore, the effective date reads September 30, 2015.

A tenant in receipt of a 1 Month Notice has 10 days to dispute the Notice. In this case, an application was received indicating the tenant wished to dispute the Notice; however, the tenant's application has been dismissed due to failure to appear at the hearing.

Where a tenant's application to cancel a Notice to End Tenancy is dismissed and the landlord orally requests an Order of Possession at the scheduled hearing, section 55 of the Act provides that an Order of Possession must be provided to the landlord. I am satisfied this criteria have been met and I provide the landlord with an Order of Possession effective November 30, 2015, as requested.

Having provided the landlord with an Order of Possession because the tenant's application to cancel the Notice was dismissed, as provided under section 55, I find it unnecessary and redundant to consider whether the Order of Possession should be provided under the landlord's application.

I make no award for recovery of the filing fee to either party. The tenant's application was dismissed and the landlord's application was unnecessary.

Conclusion

The tenant's application was dismissed and the landlord was provided an Order of Possession pursuant to a verbal request which was granted under section 55 of the Act. The Order of Possession is effective at 1:00 p.m. on November 30, 2015.

I make no award for recovery of the filing fee to either party.

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 12, 2015

Residential Tenancy Branch

