



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession based on a notice to end tenancy for cause and breach of an agreement. The Landlord also applied to recover the filing fee.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, the Tenant failed to appear for the 12 minute duration of the hearing and did not provide any evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified she served the male Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on February 19, 2016. The Landlord provided the Canada Post tracking number into oral evidence to verify this method of service, which is documented on the front page of this decision. The Landlord testified that she served the female Tenant personally with the documents for this hearing on February 19, 2016.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the male Tenant was deemed served pursuant to Section 89(1) (c) and 90(a) of the Act, and that the female Tenant was served pursuant to Section 89(1) (a) of the Act. The hearing continued to hear the undisputed evidence of the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that this tenancy started on October 1, 2015 for a fixed term of one year which is due to expire on October 1, 2016. A written tenancy agreement was signed and rent for the unit is payable by the Tenants in the amount of \$1,400.00 on the first day of each month. The Landlord testified that the Tenants paid a \$700.00 security deposit and a \$350.00 pet damage deposit at the start of the tenancy which she still retains.

The Landlord testified that she personally served the Tenants with a 1 Month Notice to End Tenancy for Cause (the "Notice") on January 8, 2016. In addition, the Landlord also served the Notice to the Tenants by registered mail to the rental unit address. The Landlord provided the Canada Post tracking number to verify this method of service, which is documented on the front page of this decision. The Notice shows a vacancy date of March 1, 2016.

The Landlord testified the Tenants have not disputed the Notice and therefore she now requests an Order of Possession to end the tenancy. The Landlord also confirmed that the Tenants are in rental arrears and have not paid rent for March or April 2016. In support of this the Landlord provided a copy of a notice to end tenancy for unpaid rent served to the Tenants on March 17, 2016. The Landlord testified that as far as she knows the Tenants are still occupying the rental unit.

Analysis

I have examined the Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I also find that the effective date on the Notice is correct in accordance with Section 47(2) of the Act, which allows for one clear rental month before the Notice becomes effective.

Section 47(4) of the Act allows a tenant to dispute a Notice by making an Application within ten days of receiving the Notice. There is no evidence before me to indicate the Tenants applied to dispute the Notice. Section 47(5) of the Act states that if a tenant fails to make an Application within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date.

Therefore, as the Tenants failed to make an Application under the time limits stipulated by the Act, the tenancy ended on the vacancy date of the Notice. However, the evidence before me is that Tenants still occupy the rental unit. Therefore, the Landlord's

request for an Order of Possession is granted. As the vacancy date of the Notice has now passed the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the BC Supreme Court as an order of that court.

As the tenancy has been ended under the Notice, there is no requirement for me to make findings on the Landlord's Application for an Order of Possession based on a breach of the tenancy agreement as this is now a moot issue.

Since the Landlord has been successful in this Application, I also grant the \$100.00 filing fee for the cost of having to make this Application. The Landlord may obtain this relief by deducting \$100.00 from the Tenants' security deposit pursuant to Section 72(2)(b) of the Act.

Conclusion

The Tenants did not dispute the Notice and still occupy the rental unit. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenants. The Landlord may recover the filing fee from the Tenants' 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: April 07, 2016

Residential Tenancy Branch