



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 to end tenancy for cause issued on February 22, 2016.

The landlord provided affirmed testimony that on March 16, 2016 copies of the hearing documents and 46 pages of evidence was served to the tenant via registered mail. The mail was sent to the rental unit address. A Canada Post Tracking number was supplied as evidence.

On March 16, 2016 landlord J.S. and an administrative assistant, C.S., posted a copy of the hearing documents and evidence to the tenants' door. Service occurred at approximately 2:00 p.m.

Pursuant to section 89(2)(d) and section 90 of the Act, I find the tenant was served with the hearing documents and evidence effective the third day after posting to the door; March 19, 2016.

Further, pursuant to section 89(2)(b) and section 90 of the Act, I find that the tenant is also deemed served with the hearing documents and evidence effective March 21, 2016; five days after mailing.

The tenant did not attend the hearing which commenced at 9:00 a.m. and ended at 9:12 a.m.

Issue to be Decided

Is the landlord entitled to an Order of possession based on a Notice ending tenancy for cause issued on February 22, 2016?

Background and Evidence

The tenancy commenced on January 1, 2016; subsidized rent is due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The landlord provided affirmed testimony that on February 22, 2016 a one month Notice to end tenancy for cause was posted to the tenants' door. The Notice was posted by T.G. and J.S. at 9:00 a.m.

The Notice was also served to the tenant via registered mail sent to the rental unit address on February 22, 2016. The landlord submitted a copy of a registered mail receipt and tracking number.

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 that he must move out of the unit by the effective date of the Notice; April 1, 2016.

The reason stated on the Notice to end tenancy was that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Since the Notice was served the landlord has issued rent receipts, for use and occupancy only.

Analysis

I find, pursuant to section 88(d) and 90 of the Act that the tenant is deemed served with a copy of the one month Notice to end tenancy for cause on February 27, 2016; five days after mailing.

Further, I find, pursuant to section 88(g) and 90 of the Act that the tenant is also deemed served with a copy of the one month Notice to end tenancy for cause on February 25, 2016; three days after posting to the rental unit door.

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.*

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, April 1, 2016.

The landlord has accepted rent payments and issued receipts for use and occupancy only. The receipts confirmed the landlords' intention to end the tenancy. The tenant was served with Notice of this hearing and failed to attend the hearing. I find that the intention of the landlord was clear; that the landlord was ending the tenancy.

Section 55(2) of the Act provides:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;*
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;***
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;*
- (d) the landlord and tenant have agreed in writing that the tenancy is ended*

(Emphasis added)

The tenant has been served with the Notice ending tenancy for cause and there was no evidence before me the tenant disputed the Notice within the prescribed time limit. 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: April 27, 2016

Residential Tenancy Branch