



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, 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 to recover the filing fee from the Tenant. An agent for the Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenant despite the line being left open for ten minutes to allow the Tenant to appear. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified he served the Tenant by registered mail to the rental unit on June 17, 2016 with a copy of his Application and the Notice of Hearing documents. The Landlord provided a copy of the Canada Post tracking number into evidence to verify this method of service. 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 Tenant was deemed served with the required documents on June 22, 2016 pursuant to 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 July 1, 2015 for a fixed term of one year which was intended to continue on a month-to-month basis thereafter. A written tenancy agreement was signed and rent for the unit is payable by the Tenant in the

amount of \$860.00 on the first day of each month. The Landlord testified that the Tenant paid a \$430.00 security deposit at the start of the tenancy which he still retains.

The Landlord testified that the Tenant was habitually late paying rent and had to be served with multiple notices to end tenancy for unpaid rent for those months. These were provided into evidence. As a result, the Landlord served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on May 21, 2016. The Notice was served to the Tenant by posting it to the Tenant's door with a witness. The witness signed a Proof of Service document to verify this method of service.

The Notice shows a vacancy date of June 30, 2016. The Landlord testified the Tenant has not disputed the Notice and since being served the Notice, the Tenant is in rental arrears for July 2016. Therefore the Landlord now requests an Order of Possession to end the tenancy.

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 find that the Notice was served to the Tenant by posting it to the rental unit door pursuant to Section 88(g) of the Act. Section 90(c) of the Act allows for a document to be deemed served three days after it is attached to the door. Therefore, I find that the Tenant is deemed to have received the Notice on May 24, 2016. 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 Tenant 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 Tenant failed to make an Application to dispute the Notice, the Tenant is presumed to have accepted the Notice and the tenancy must end on the vacancy date of the Notice. Therefore, the Landlord's request for an Order of Possession is granted.

As the Tenant still occupies the rental unit and is in rental arrears 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 Supreme Court of British Columbia as an order of that court.

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 Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenant did not dispute the Notice and still occupies the rental unit. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord may recover the filing fee from the Tenant's 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: July 22, 2016

Residential Tenancy Branch