



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, FF

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 for landlords' use of property and to recover the filing fee costs from the tenants.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The tenants confirmed receipt of the landlord's evidence and hearing package on June 25, 2016. The package included a copy of a two month Notice to end tenancy for landlords' use issued on May 26, 2016. The tenants did not indicate they had made a written submission.

Background and Evidence

The tenancy commenced in November 2010. Rent is due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The landlord testified that a two month Notice ending tenancy for landlords' use of the property was issued on May 26, 2016 with an effective date of July 31, 2016. The Notice contained the reason:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Notice indicated that the tenants must apply to cancel the Notice within 10 days of receipt and that if the tenants did not apply to dispute the Notice within 10 days the

tenants were presumed to have accepted the Notice and that he must move out of the unit by the effective date of the Notice; July 31, 2016.

The landlord submitted a proof of service document, signed by the landlord and a witness, M.N. Both the landlord and his witness signed declaring the Notice ending tenancy was attached to the tenants' door. The landlord said that when they went to the tenants' door no one answered, so the Notice was placed in the door jamb. The landlord submitted a photograph of the copy of the Notice that was to be placed on the door; taken outside of the rental unit.

The landlord was leaving the property when he saw the tenants' 13 year old daughter open the door. The landlord then approached the daughter. The landlord signed a second copy of the Notice that he had with him and handed that to the child, with his business card.

I asked the landlord if he saw the Notice that he had placed in the door jamb when he went back to the door to hand the second Notice to the child. The landlord responded that he had no idea what happened to that copy of the Notice. The copy left on the door had an electronic signature; the copy given to the child had an original signature.

The landlord supplied copies of text messages sent between the tenants and the property owner on May 25, 2016. The texts indicate that the tenants were upset that the owner of the property was not giving them the three months' Notice to end the tenancy that had been promised. The owner was apologetic and told the tenants the agent would be delivering the Notice to them. The owner told the tenants they could dispute the Notice once it was given to them.

On May 26, 2016 a copy of the Notice was emailed to each tenant. The tenants did not respond to that email.

On May 27, 2016 the landlord's agent text the male tenant asking that they meet to discuss the move out date. The landlord confirmed that there was no email or text communication sent that specifically referenced receipt of a Notice ending tenancy until the tenants emailed the landlord on June 1, 2016.

On June 1, 2016 the tenants emailed the landlord to explain their child had just given them a copy of the first page of a two month Notice to end tenancy issued on May 26, 2016. The tenants said that service to their daughter was not appropriate. She is 13 years old and did not understand the importance of the papers. The tenants said they did not receive another copy of the Notice, or the second page and disputed the landlord's submission that a copy had been placed on the door.

The tenants said that the landlord could have sent them a message telling them the Notice had been placed on the door, but there was no communication outside of the May 27, 2016 text message from the landlord, which did not reference the Notice

ending tenancy. The tenants said the landlord could have told them about the Notice, but he did not.

During the hearing the tenants said that they had made a 37 page evidence submission; that evidence was before the landlord but it was not before me. I explained that I had no doubt that tenants' had made the evidence submission and in fact a check of the electronic file indicates the evidence was submitted to the Residential Tenancy Branch (RTB) by the tenants on July 14, 2016. The tenants explained that the evidence rebutted service of the Notice. The tenants were told that they could read from any emails and make any oral submission they wished, to ensure that their relevant written documents were entered as evidence. The parties were both told that the issue of utmost importance was service of the Notice to end tenancy; so any submissions related to service of the Notice would be most relevant.

The landlord said that the tenants' written submissions include a copy of both Notices to end tenancy issued; the one electronically signed and the one he personally signed. The tenants responded that they took copies of both Notices from the landlords' evidence package.

Analysis

The tenants have confirmed receipt of the two month Notice to end tenancy for landlords' use. A complete copy of the Notice was contained in the landlords' evidence given to the tenants on June 25, 2016. The tenants confirmed they have not disputed the Notice.

I have considered the methods of service utilized by the landlord in order to determine the service date of the Notice to end tenancy dated May 26, 2016.

The initial method of service used by the landlord on May 27, 2016 was by placing a copy of the Notice between the door and door jamb of the rental unit.

Section 88 of the Act sets out methods of service that may be utilized for certain documents. Section 88(g) provides that a document may be served:

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord

I have considered the meaning of "attached" provided by *Black's Law Dictionary, seventh edition*:

To annex, bind or fasten.

It is reasonable to expect that when a document is placed between a door and door jamb on a closed door, when the door is opened the document will fall to the ground. If the documents were truly attached to the door there would be no question that the document

would remain on the door, when the door was opened. I find that by any reasonable standard “attach” means that the documents must be affixed or fastened; not lodged between a door and door jamb.

Further, RTB policy suggests that when attaching a document in order to complete service the person should make sure that the document will be readily seen by the person entering or leaving the residence. In this case, placing the Notice on the outside of the door would not allow anyone leaving the unit and opening the door from inside the unit to see the Notice ending tenancy unless it happened to fall to their feet.

Therefore, I find that when the Notice to end tenancy was placed between the door and door jamb it was not properly attached to the door, as required. Even the landlord has confirmed that when he walked up to the door after the tenants’ child opened it he did not look for the Notice, in an attempt to ensure that the Notice had not fallen where it would not be seen by the tenants. Therefore, I find that the landlord has failed to comply with section 88(g) of the Act and that the Notice was not served by attaching to the door on May 27, 2016.

In relation to service to the tenant’s 13 year old child, I have considered section 88(e) of the Act which allows service of a document to an adult who apparently resides with the tenant. RTB policy suggests an adult is a person who has turned 19 years of age. Therefore, I find that the landlord did not complete service of the Notice ending tenancy when it was given to the 13 year old child. Further, there was no evidence before me to convince me that the tenants had been sufficiently served a complete copy of the Notice at any time.

I have considered the landlords’ attempt to provide a copy of the Notice to the tenants via email. Email is not an acceptable method of service and, in the absence of confirmation of receipt by the tenants I cannot find the Notice was sufficiently served via email.

There is no doubt from the evidence before me that the tenants had an interest in not receiving the Notice to end tenancy prior to June 1, 2016. They had expected to be given until the end of August to vacate and had informed the landlord they had expected to remain in the unit until that time. However, I find that the methods of service chosen by the landlord, combined with the failure to ensure that the Notice to end tenancy had been properly delivered, outweighs any intention of the tenants’ to remain in the rental unit. If service of the Notice ending tenancy was proven the tenants’ reliance on a previous verbal understanding would be diminished. When the landlord sent a message to the tenants on May 27, 2016 no mention of the Notice ending tenancy was made. It was not until the tenants sent the June 1, 2016 message to the landlord that the Notice to end tenancy was referenced by either party.

Therefore, I find that the date the landlords’ evidence was received by the tenants, June 25, 2016, is the date the tenants’ were given a complete copy of the one month Notice to end tenancy for landlords’ use of the property. This was confirmed by the tenants during the hearing. The tenants did not dispute the Notice within 10 days of June 25, 2016.

Therefore, I find, pursuant to section 49(9) of the Act, that the tenants are conclusively presumed to have accepted the tenancy will end on the effective date of the Notice.

Section 53 of the Act provides, in part:

53 (1) *If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.*

(2) *If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.*

Therefore, as the Notice was given on June 25, 2016 and rent is due on the first day of each month I find that the effective date of the Notice is changed to the earliest date the Notice will comply with the Act; August 31, 2016.

The landlord has been granted an Order of possession that is effective **August 31, 2016 at 1 p.m.** This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I decline filing fee costs to the landlord.

Conclusion

The effective date of the one month Notice to end tenancy for landlords' use of the property issued on May 26, 2016 is August 31, 2016.

The landlord is entitled to an Order of possession for the effective date of the Notice

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: July 28, 2016

Residential Tenancy Branch