



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Entres Nous Femmes Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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 unpaid rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on September 21, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail to the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served on the fifth day after mailing in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The landlord withdrew all matters, with the exception of the request for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The tenancy commenced on November 1, 2008. Subsidized rent is currently \$474.00 per month due on the first day of each month.

The landlord stated that on September 2, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of September 12, 2016, was served by posting to the tenants' door. Service occurred in mid-morning.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$474.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant paid the outstanding rent on September 14, 2016.

The landlord has issued receipts for use and occupancy only for each of September, October and November 2016 rent payments. The receipts are placed in the tenants' mail slot.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on September 5, 2016.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on September 5, 2016, I find that the earliest effective date of the Notice is September 15, 2016.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was September 15, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on September 15, 2016, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant paid the rent nine days after receiving the Notice. There was no evidence before me that the tenant disputed the Notice. Therefore, pursuant to section 46(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice; September 15, 2016.

The landlord has issued receipts for use and occupancy only; informing the tenant of the landlords' continued intention to end the tenancy.

The landlord asked for a possession date effective November 30, 2016.

Therefore, the landlord has been granted an order of possession that is effective at **1:00 p.m. on November 30, 2016**. 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 on the parties, unless otherwise provided under the Act, 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: November 10, 2016

Residential Tenancy Branch