



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession for cause based on a one month Notice to End Tenancy dated September 14, 2016 and setting the end of tenancy for October 31, 2016.
- b. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. Policy Guideline #12 includes the following.

“Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.”

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant by mailing, by registered mail to where he resides on September 14, 2016 and that it was sufficiently served 5 days after mailing despite the fact that the Tenant failed to claim his registered mail. Further I find that the Application for Dispute Resolution/Notice of Hearing was served by mailing, by registered mail to where the Tenant resides on October 6, 2016 and that it was sufficiently served on Tenant 5 days after mailing despite the fact that the Tenant failed to pick up his registered mail.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant owned the rental property and sold it to the clients of the landlord approximately 3 years ago. The parties entered into a written tenancy agreement that provided that the tenancy would commence on October 1, 2014, end on September 30 2015 and become month to month after that. The rent was \$3200 per month. The parties subsequently agreed that the tenant would rent the upstairs portion for \$1980 per month. The tenant paid a security deposit of \$990. The downstairs portion was rented separately to a third party. The rent has been increased and the present rent is \$990. The tenant(s) have remained in the rental unit.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a one month Notice to End Tenancy by mailing, by registered mail to where the tenant resides on September 14, 2016. The Act provides it is deemed received 5 days later. I determined there was sufficient service even though the tenant failed to pick up his registered mail. The Tenant has not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Policy Guideline #36 includes the following:

“Notice to End

Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.”

Accordingly, I granted the landlord an Order for Possession effective November 30, 2016. As the landlord has been successful I further ordered that the Tenant shall

reimburse to the landlord the cost of the filing fee in the sum of \$100 such sum may be deducted from the security deposit. .

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: November 25, 2016

Residential Tenancy Branch