



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL

Introduction

This is the Landlord's Application for Dispute Resolution seeking an Order of Possession.

Both parties signed into the Hearing and gave affirmed testimony.

The Tenant has not disputed the Notice to End Tenancy, the time limit to dispute the Notice has passed, and therefore pursuant to the provisions of Section 49(9) of the Act, I find that the Landlord is entitled to an Order of Possession.

Issue(s) to be Decided

What is the effective date of the Notice to End Tenancy?

Background and Evidence

Rent is due on the first day of each month.

The Tenant stated that she received the Notice to End Tenancy for Landlord's Use on September 14, 2016.

The Landlord testified that he mailed the Notice to End Tenancy, by registered mail, to the Tenant on August 22, 2016. The Landlord provided the tracking number for the registered mail package. The Landlord submitted that the Tenant was deemed to have been served with the Notice five days after the Notice was mailed, on August 27, 2016.

The Landlord submitted that the Tenant had avoided picking up the package from the Canada Post outlet.

The Tenant disputed that she was avoiding service. She stated that she had trouble picking up the package because her ID was in her other name and the post office would not release it. She testified that she went back to the post office later and convinced another employee to release the package to her.

Analysis

Section 49(2) of the Act provides:

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

[reproduced as written]

Section 90 of the Act provides:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

[reproduced as written]

The “deemed” provision in the Act is rebuttable. Section 47 states that the effective date of the end of a tenancy is calculated by when the notice to end tenancy is **received**.

Residential Tenancy Policy Guideline 12 provides, in part:

The Legislation sets out when documents that are not personally served are considered to have been received. **Unless there is evidence to the contrary**, a document is considered or ‘deemed’ received:

- ☐ if given or served by mail (ordinary or Registered Mail), on the fifth day after mailing it;
- ☐ if given or served by fax, on the third day after faxing it;
- ☐ if given or served by attaching a copy of the document to a door or other conspicuous place, on the third day after attaching it; and
- ☐ if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after leaving it.

Deemed receipt applies to all types of documents not personally served.

Deemed receipt provisions are generally used in the absence of evidence of the date documents were actually received. The provisions are also used to calculate timelines for future events.

For example, s. 47 allows a landlord to end a tenancy by giving notice to the tenant. S. 47 (4) states that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. Therefore, a tenant must file their application for dispute resolution within 10 days of receipt of the notice.

At the dispute resolution hearing, if service or the time frame for having responded is in dispute, an arbitrator may consider evidence from both the party receiving the document and the party serving the document to determine the date of service and the calculation of time a respondent had for responding.

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.

In the event of disagreement between the parties about the date a document was served and the date it was received, an arbitrator may hear evidence from both parties and make a finding of when service was affected.

[my emphasis added]

In the circumstances before me, I find that the Tenant received the Notice to End Tenancy on September 14, 2016. I find that there was insufficient evidence that the Tenant was deliberately avoiding or delaying service. The Landlord, or his agent, was

at liberty to serve the Tenant by handing the Notice to End Tenancy to the Tenant, or by posting the Notice to the Tenant's door.

Rent is due on the 1st day of each month, and therefore pursuant to the provisions of Section 49(2) of the Act, I find that the tenancy ends on November 30, 2016.

Conclusion

The Landlord is hereby provided with an Order of Possession effective **1:00 p.m., November 30, 2016**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 02, 2016

Residential Tenancy Branch