



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL

Introduction

The landlord has applied requesting an order of possession based on a two month Notice ending tenancy for landlords' use of the property issued on September 20, 2016.

The landlord provided affirmed testimony that on December 1, 2016 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail. The landlord provided a copy of the registered mail receipt and tracking number as evidence of service to the rental unit address.

The male landlord said that he was at the rental unit property when the Canada Post delivery person arrived at the rental unit and placed a registered mail Notice card on the tenants' window. The landlord saw the tenant come to the window and remove the Notice card.

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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on an undisputed Notice ending tenancy?

Background and Evidence

The tenancy commenced in October 2011. Rent is due on the first day of each month.

The landlord said that on September 23, 2016 a two month Notice to end tenancy for landlords' use of the property was served to the tenant. The female landlord handed the tenant the Notice, at the rental unit address. Service occurred at approximately 1:00 p.m. The tenant had another person with him at the time service was completed. The landlord knew that person as a past tenant.

The Notice was issued on September 20, 2016, and required the tenant to vacate effective December 1, 2016. The Notice indicated that the tenant had 15 days in which to dispute the Notice, otherwise the tenant would be presumed to have accepted the ended.

The Notice gave the following reason:

“The landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.”

The landlord is not aware of any application by the tenant to dispute the Notice. The tenant remains in the rental unit.

Analysis

The landlord has issued a Notice to end tenancy based on section 49(6) of the Act.

I find, in the absence of the tenant who was served with notice of this hearing, that the tenant received the Notice ending tenancy on September 23, 2016; the date the notice was personally given to the tenant.

I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit no later than December 1, 2016.

Section 49 (8) and (9) of the Act provide:

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The tenant had 15 days from September 23, 2016 in which to dispute the Notice. There was no evidence before me that the tenant disputed the Notice.

Therefore, pursuant to section 49(9) of the Act I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice; December 1, 2016. As a result, pursuant to section 44(1)(a)(v) I find that the tenancy ended effective December 1, 2016.

Therefore, pursuant to section 55(2)(b) of the Act I find that the landlord is entitled to an order of possession.

The landlord has been granted an order of possession that is effective two days after service to the tenant. 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 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: January 17, 2017

Residential Tenancy Branch