



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made on January 16, 2017 for an Order of Possession based on a notice to end tenancy for cause.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenants during the eight minute hearing and no evidence was provided by the Tenants prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified each Tenant was served with the Application and the Hearing Package by registered mail on January 25, 2017. The Landlord provided the Canada Post tracking numbers into oral evidence to verify this service method. These are noted on the front page of this Decision. Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenants were deemed served with the required documents on January 21, 2017 pursuant to the Act. The hearing continued to hear the undisputed evidence as follows.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified this tenancy started approximately in December 2014 for a fixed term of one year which then continued on a month-to-month basis thereafter. Rent in the amount of \$1,600.00 is payable by the Tenants on the first day of each month. No security deposit was paid for the tenancy.

The Landlord testified the Tenants were served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on December 29, 2016 with a vacancy date of February 2, 2017. The Landlord provided a Proof of Service document which was signed by a witness verifying the 1 Month Notice was served by posting it to the Tenants' door.

The Landlord submitted that the Tenants had not disputed the 1 Month Notice and continue to occupy the rental unit without paying any rent from December 2016 onwards. Therefore, the Landlord requests an Order of Possession to end the tenancy.

Analysis

I have examined the 1 Month Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I find that the vacancy date on the 1 Month Notice is correct in accordance with Section 47(2) of the Act, which allows for one clear rental month before it becomes effective. I also accept the evidence before me that the 1 Month Notice was served to the Tenants pursuant to Section 88(g) of the Act.

Section 47(4) of the Act allows a tenant to dispute a 1 Month Notice by making an Application within ten days of receiving it. There is no evidence before me to indicate the Tenants applied to dispute the 1 Month Notice.

Section 47(5) of the Act states that if a tenant fails to make an Application within ten days, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the notice to end tenancy and must vacate the rental unit by that date.

Therefore, as the Tenants failed to make an Application under the time limits stipulated by the Act, the tenancy ended on the vacancy date of the 1 Month Notice, February 2, 2017. As a result, the Landlord's request for an Order of Possession is hereby granted.

As the Tenants continue to occupy the rental unit without paying rent, the Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This order must be served on the Tenants and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if they fail to vacate the rental unit.

Conclusion

The Tenants did not dispute the 1 Month Notice and still occupy the rental unit. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenants. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 20, 2017

Residential Tenancy Branch

