



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made on January 19, 2017 an Order of Possession based on a notice to end tenancy for cause and to recover the filing fee from the Tenant.

An agent for the Landlord (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 Tenant during the six minute hearing and no evidence was provided by the Tenant prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified the Tenant was served with the Hearing Package by registered mail on January 12, 2017. The Landlord provided a copy of the Canada Post tracking receipt as evidence to verify this service method. 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 Tenant was deemed served with the required documents on January 17, 2017 pursuant to the Act. The hearing continued to 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 that this tenancy for a subsidised rental unit started on September 1, 2016 on a month to month basis. A written tenancy agreement was signed and the Tenant's rent contribution was established at \$800.00 payable on the

first day of each month. The Tenant paid a \$300.00 security deposit on August 12, 2016 which the Landlord still retains.

The Landlord testified the Tenant has caused disturbance in this tenancy. As a result, the Tenant was personally served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on November 24, 2016. The Landlord provided a Proof of Service document which was signed by a witness verifying this method of service. The 1 Month Notice, dated November 18, 2016, shows a vacancy date of December 31, 2016.

The Landlord testified the Tenant has not disputed the 1 Month Notice and continues to occupy the rental unit. Therefore, the Landlord requests an Order of Possession to end the tenancy.

The Landlord testified that the Tenant paid rent for December 2016 and January 2017 but they have not accepted any rent for February 2017 at the time of this hearing. The Landlord testified that for the two rent payments accepted from the Tenant after the issuing of the 1 Month Notice, the Tenant was provided with rent receipts which indicated that the rent was being accepted for use and occupancy only.

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 personally served to the Tenant pursuant to Section 88(a) 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 Tenant 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 that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date. Therefore, as the Tenant 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, December 31, 2016. However, as the Tenant continues to occupy the rental unit, the Landlord's request for an Order of Possession is hereby granted.

As the Landlord has accepted rent for this tenancy without re-instating it and the Landlord has not accepted any rent for February 2017, the Landlord is now entitled to an Order of Possession effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

Since the Landlord has been successful in this Application, I also grant the \$50.00 filing fee for the cost of having to make this Application. The Landlord may obtain this relief by deducting \$50.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenant did not dispute the 1 Month Notice and still occupies the rental unit. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord may recover the filing fee from the Tenant's security deposit. 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 03, 2017

Residential Tenancy Branch