



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL

Introduction

This hearing was convened in response to an application by the landlord for an Order of Possession in relation to an undisputed Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated November 26, 2017 with an effective date of January 31, 2017. Each acknowledged receiving the evidence of the other as also provided to this hearing. Both the landlord and the tenant participated in the hearing. The parties were given opportunity to mutually resolve their dispute to no avail. Both parties were given opportunity to be heard, ask questions and each participated with their testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present and had asked all of the questions they sought answered.

Issue(s) to be Decided

Is the Notice to End Tenancy valid in compliance with Section 52 of the Act?

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The following is relevant and undisputed by the parties. The tenancy began in December 01, 2015. Rent is payable in advance on the first day of each month.

The following is relevant and is in dispute. The landlord testified that on November 26, 2016 they served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use

(the "Notice") by posting the notice on the tenant's rental unit door. The tenant testified they only recently received a copy of the notice as a result of this proceeding, and did not receive such a notice as claimed by the landlord. The landlord claims the tenant was served the notice as required by the Act and provided their evidence of such service, submitting a proof of service document completed and signed by an agent of the landlord in the company of a witness. The landlord claims the tenant received the notice and did not file an application to dispute the Notice within the legislated time to do so and has not moved out of the unit.

The landlord provided their agent as a witness which they submitted as responsible for serving the claimed 2 month notice to the tenant. The witness, CE, provided sworn testimony as follows.

The witness testified they were responsible for serving the notice to the tenant by posting the notice to the tenant's door on November 26, 2016 at 4:58 p.m. in the company of a witness to their actions, KWC. The witness testified they had been to the rental unit on previous occasions and were familiar with the rental unit. They testified confirming it was the tenant's door and not mistaken for a different entrance door. The claim to have knocked on the door without success, therefore posted the notice to the door near the mailbox opening, and took a photo image of the notice posted to the door. The witness testified they and their witness subsequently completed the proof of service document provided to the landlord's agent. The witness testified that 2 days later, on November 28, 2016, they called the tenant and spoke with their son who told them they would check in respect to the notice and return the communication, however, did not. The witness also testified that the following day on November 29, 2016 they posted a letter on the same rental unit door in respect to further communicating with the tenant, as they had not received any response.

The tenant was permitted to ask questions of the witness. The tenant chose to state the witness was mistaken as to the door to where they purportedly posted the notice and that the door depicted in the photo image of the posted document was not the door to the rental unit. The tenant repeated they did not receive the notice as claimed by the landlord.

The landlord provided the photo image in their evidence. The parties each confirmed their image and that received by this proceeding were the same. It was noted in the hearing that the photo image appears to be of a dark background and that the photo image parameters are almost wholly framed by the 2 month notice in question with little room for background. None the less, the tenant claims the background depicted is not of the rental unit door.

Both parties provided their versions of communication respecting the notice and efforts to resolve their impasses, to no avail.

The tenant further provided in their evidence that a bathroom leak was reported to the landlord in October 2106 which remains unresolved by the landlord.

The landlord further provided they seek an Order of Possession effective no later than March 31, 2017.

Analysis

In this type of matter the burden is on the landlord to prove they served the tenant with the subject 2 month notice in accordance with the Act. In respect to the relevant evidence in this matter I find the landlord's witness was forthright and clear in respect to their actions on November 26, 2016. I find the witnesses' actions in respect to their testimony made sense and that their proof of service documentation also made sense. As a result I found their testimony credible.

Service of documents is rebuttable by the tenant, however in this matter I find the tenant has not provided any meaningful support to their rebuttal other than to repeat they did not receive a notice. I accept the witness testimony they posted a 2 month notice to end tenancy for landlord's use on November 26, 2016. I also accept that the witness was familiar with the subject rental unit prior to November 26, 2016. As a result, on balance of probabilities I find that the landlord's witness posted the notice to end tenancy on the appropriate door of the subject rental unit on November 26, 2016.

I accept the landlord served the tenant with their 2 Month Notice to End on November 26, 2016, with a stated effective date of January 31, 2017 and I find the Notice is in compliance with Section 49(2) and **Section 52** of the Act, and *is valid*.

I find **Section 49** of the Act requires that upon receipt of a Notice to End Tenancy for Landlord's Use of Property, the tenant has the right, within fifteen (15) days of receiving the notice, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not dispute the Notice, the tenant is conclusively presumed by the Act to have accepted that the tenancy ends on the effective date of the Notice *and must vacate* the unit by that date.

Section 55(2)(b) of the Act provides that a landlord may request an Order of Possession of a rental unit by making an application for dispute resolution where a Notice to End the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Based on the evidence I find that the tenant was served in accordance with the Act with a valid Notice to End. The tenant did not and has not disputed the Notice in accordance with the Act and has not moved out of the unit. As a result, I find the Landlord is entitled to an Order of Possession. As the effective date of the Notice has past, the landlord is entitled to their request for an end of tenancy date of March 31, 2017.

It must be noted that ending a tenancy is a serious matter; and, that despite the landlord's reliance on a method of service prescribed by the Act it is important for all parties to be assured of what is occurring respecting the tenancy so as to avoid dispute, confusion, or urgent measures such as this proceeding. The Act does not prohibit serving a party by more than one prescribed method and it must be noted that it was available to the landlord to ensure compliance with their notice to end by providing the notice by way of more than one prescribed method.

I grant an Order of Possession to the Landlord **effective March 31, 2017**. The tenant must be served with this Order of Possession, If necessary, should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord's application is granted.

This Decision is final and binding on both parties.

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: March 07, 2017

Residential Tenancy Branch