



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB

Introduction

This hearing was convened in response to an application dated July 6, 2017 by the Landlord for an order of possession pursuant to section 55 of the *Residential Tenancy Act* (the “Act”).

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on July 7, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on July 12, 2017. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

At a previous hearing on June 22, 2017 the Parties entered into a mutual agreement to settle a dispute over a one month notice to end tenancy for cause. In that mutual agreement the Tenant agreed, inter alia, to the following terms that were set out in the Decision dated June 22, 2017:

1. The tenant will, no later than June 23, 2017, put the rubber mat provided to him by the landlord under his truck in order to prevent any oil stains on the concrete below.
2. The tenant will, no later than June 30, 2017, remove his belongings from the utility room and from the storage shed/lean-to attached to the shop.
3. The tenant will, no later than June 30, 2017, remove the unlicensed vehicle from the rental unit driveway/parking.
4. The tenant agrees that he is entitled to only one parking space for one vehicle.

The Tenant did not comply with the above terms and on July 4, 2017 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") by sending the Notice through registered mail. The reason stated on the Notice was that the tenant failed to comply with a material term and did not correct the situation within a reasonable time after the landlord gives written notice to do so.

Analysis

Section 55 of the Act provides that a landlord may request an order of possession of a rental unit where, inter alia, a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Section 90 of the Act provides that where a document is served by mail the document is deemed to be received on the 5th day after it is mailed. Based on the Landlord's evidence that the Notice was served on the Tenant on July 4, 2017 by registered mail I find that it is deemed to have been received on July 9, 2017. The Tenant had 10 days from that date to dispute the Notice and the Landlord could not apply for the order of possession until July 19, 2017. As the Landlord made its application seeking an order of possession on July 6, 2017 I find that

the Landlord made its application too early and I dismiss the application with leave to reapply.

Conclusion

The application is dismissed with leave to reapply.

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: September 18, 2017

Residential Tenancy Branch