



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SATGUR HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: OPL

Introduction

This matter was heard by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") filed on September 12, 2017 for an Order of Possession for the Landlord's use of the property.

An agent for the company Landlord appeared for the hearing and provided affirmed testimony. The Landlord's agent also provided a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") into evidence prior to the hearing. There was no appearance by the Tenants during the ten minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlord to the Tenants.

The Landlord's agent testified that he served each Tenant with a copy of the Application and the Notice of Hearing documents to the rental unit by registered mail on September 14, 2017. The Landlord's agent provided the Canada Post tracking numbers into oral evidence to verify this method of service. These numbers are detailed on the front page of this Decision. The Landlord's agent stated that the documents had been returned back to him as unclaimed.

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.

Therefore, based on the undisputed oral evidence before me, I accept the Tenants were served with required documents for this hearing on September 19, 2017 pursuant to Section 89(1) (c) and the deeming provisions of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for Landlord's use of the property?

Background and Evidence

The Landlord's agent testified that this tenancy started on May 1, 2011 for a fixed term of one year which then continued on a month to month basis thereafter. The Tenants signed a tenancy agreement which required them to pay rent of \$875.00 on the first day of each month. Rent was increased during the tenancy to the current amount of \$933.00. The Tenants paid a security deposit of \$437.50 to the Landlord on April 6, 2011 which the Landlord still holds in trust.

The Landlord's agent testified that the 2 Month Notice was served to each Tenant by registered mail on August 17, 2017. The Landlord provided the Canada Post tracking numbers into evidence to verify this method of service and testified that the each 2 Month Notice was returned back to him as unclaimed.

The 2 Month Notice was provided into evidence and is dated August 16, 2017 with a vacancy date of October 31, 2017. The reason stipulated on the 2 Month Notice to end the tenancy is because the Landlord intends to covert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The Landlord's agent confirmed that the Tenants have not moved out of the rental unit. The Landlord's agent confirmed that the Tenants paid for November 2017 rent which was accepted for use and occupancy only; however, the Tenants have not paid any rent for December 2017. As a result, the Landlord requests an immediate Order of Possession to end the tenancy. The Landlord's agent also requested recovery of the filing fee as he had not applied for this on the Application.

Analysis

I have examined the 2 Month Notice and I find that the contents on the approved form comply with Section 52 of the Act. I accept the undisputed evidence of the Landlord's agent that the 2 Month Notice was served to each Tenant by registered mail in accordance with Section 88(c) of the Act on August 17, 2017. Therefore, pursuant to the deeming provisions of the Act, the Tenants are deemed to have received the 2 Month Notice on August 22, 2017.

Section 49(8) of the Act provides a tenant with 15 days to make an Application to dispute a 2 Month Notice. Section 49(9) of the Act stipulates that if a tenant fails to dispute a 2 Month Notice by making an Application within the 15 day time period, then

they are conclusively presumed to have accepted the tenancy ends on the vacancy date of the 2 Month Notice and they must vacate the rental unit by that date.

There is no evidence before me that the Tenants have disputed the 2 Month Notice. Therefore, I find the Tenants are conclusively presumed to have accepted the tenancy ended on October 31, 2017.

As the vacancy date of the 2 Month Notice has now passed and the Tenants are still occupying the rental unit and are in rental arrears, the Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This order must be served to the Tenants and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

As the Landlord has been successful in this matter, I allow the Landlord to deduct \$100.00 from the Tenant's security deposit to recover the filing fee pursuant to my authority under Section 72(2) (b) of the Act.

Conclusion

The Tenants have breached the Act by not moving out of the rental unit in accordance with the vacancy date on the 2 Month Notice. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenants. The Landlord is also allowed to recover the filing fee from the Tenants' 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: December 06, 2017

Residential Tenancy Branch