



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACACIA TOWER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “Act”), for an Order of Possession.

The Landlord attended the hearing. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing was personally served on the Tenant on March 16, 2018. I find that the Tenant had been duly served with the Notice of Hearing in accordance with the Act. The Landlord was affirmed to be truthful in their testimony.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However only the evidence relevant to the issues and findings in this matter are described in this decision

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began on August 1, 2018 as a month to month tenancy. Rent in the amount of \$900.00 is to be paid in advance before the last day of each month. The Tenant paid the Landlord a \$435.00 security deposit.

The Landlord testified that he served a One Month Notice to End Tenancy for Cause (the "Notice"), on March 1, 2018, by attaching it to the Tenants' door or other conspicuous place. The Notice indicated an end of tenancy date of March 31, 2018. The Landlord also testified that the Tenant had not served the Landlord with an application to show they had disputed the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

Landlord's notice: cause

47 (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired. The Landlord is therefore entitled to an Order of Possession pursuant to section 55(2) of the *Act*.

In issuing an Order of Possession pursuant to section 55(2), I must first be satisfied that the Notice to end tenancy complies with section 52 of the *Act*. I have carefully reviewed all the documentary evidence and oral testimony and in accordance with section 88 and 89 of the *Act*, and I find that the Tenant was deemed served with the Notice on March 4, 2018, three days after the day the notice was posted to their door. I find the effective date recoded on this Notice did not allow sufficient time for this method of service.

However, the *Act* does provide for incorrect effective dates to be automatically changed under Section 53 of the *Act*.

Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore, I find that the earliest date that this Notice may take effect, in order to comply with the *Act*, is April 30, 2018.

Accordingly, I grant an Order of Possession to the Landlord, not later than 1:00pm on April 30, 2018.

Conclusion

I grant an Order of Possession to the Landlord, not later than 1:00pm on April 30, 2018. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 26, 2018

Residential Tenancy Branch