



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUNTINGTON PLACE DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for an Order of Possession for cause pursuant to section 55.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

The landlord testified that a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), dated April 11, 2018 was served on the tenant by posting on the rental unit door, on that date. The tenant disputed ever being served with a 1 Month Notice.

The landlord testified that the landlord's application for dispute resolution dated June 13, 2018 was served on the tenant by registered mail sent on that date. The landlord did not have a Canada Post tracking number as evidence in support of their claim of service. The tenant disputed ever being served with the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties gave evidence on the following facts. This tenancy began on January 14, 2018. The monthly rent is \$717.58 payable on the first of each month.

Both parties gave testimony complaining about the conduct of the other. They each characterized the other as being at fault, flouting rules and being the instigator of the various issues. Both parties categorically disputed the evidence presented by the other.

The landlord claimed that both the 1 Month Notice and application were served on the tenant in accordance with the Act. The tenant disputed ever receiving any of the materials from the landlord. When asked how they were made aware of the date and time of the hearing and how to call in, they said that they heard it “everywhere”. The tenant alluded to deficiencies in the tenancy for which they intended to file their own application for dispute resolution.

Analysis

I first turn to the issue of credibility in determining the service of the 1 Month Notice and application. The landlord testified that both documents were served in accordance with the Act; the 1 Month Notice by posting and the application by registered mail. The landlord had little documentary evidence in support of their position. The tenant disputed that they were served with either document at all.

Taken in its entirety I find the landlord to be more credible. The landlord gave cogent, consistent testimony. Where they were unable to recall specific facts they did not guess or provide conjecture but referenced their own notes and were forthright about the limits of their recollection.

I found the tenant’s evidence to be less credible than that of the landlord. The tenant stated that they were not provided with the notice of hearing from the landlord nor did they learn about the hearing through the Residential Tenancy Branch. Instead, when asked directly how they came to be aware of the hearing they responded that the information was “everywhere”. While I find that it is possible that the landlord or others may have mentioned that there was a dispute resolution hearing and provided the time and date, I find that there is no air of reality to the suggestion that the specific hearing codes would have been made available generally outside of the Notice of Hearing.

I find the landlord’s evidence to be more credible than the tenant. I accept the landlord’s evidence that the 1 Month Notice was served on the tenant by posting on the rental unit door on April 11, 2018. Pursuant to sections 88 and 90 of the *Act*, I find that the 1 Month Notice was deemed served on April 14, 2018, three days after posting. I accept the landlord’s evidence that the notice of application dated June 13, 2018 was served on the tenant by registered mail sent on that date. Pursuant to sections 89 and

90 of the *Act*, I find that the tenant was deemed served with the notice of application on June 18, 2018, five days after mailing.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, May 31, 2018.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date has passed I issue an Order of Possession effective 2 days after service.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant on the premises 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: July 4, 2018

Residential Tenancy Branch