



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This expedited hearing dealt with the tenant's application pursuant to section 54 of the *Residential Tenancy Act* (the "Act") for an order of possession of the rental unit.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by counsel.

Preliminary Issue – Service of Application

The tenant testified that they served the landlord with their application and evidence by registered mail sent on August 12, 2020 to the landlord's address of service provided on the tenancy agreement. The tenant provided a valid Canada Post tracking receipt as evidence of service. The tracking receipt clearly shows that the materials were sent to the address for service provided on the written tenancy agreement. The tenant testified that based on online tracking information the dispute resolution package was delivered on August 14, 2020.

The landlord disputed that they were served with the tenant's application and evidence in accordance with the Act or at all.

Pursuant to the Standing Order of the Director dated June 26, 2019, a party to an application for an expedited dispute resolution hearing scheduled for 17 days or more after the date the application is made may serve their materials by sending a copy by registered mail to the address at which a landlord carries on business as a landlord.

In the present case this application was made on August 5, 2020 and scheduled for hearing on this date, more than 17 days after the application date. Therefore, in accordance with the standing order registered mail was an acceptable method of service.

Pursuant to Residential Tenancy Rule of Procedure 10.3 the tenant was required to serve the respondent with their application and materials within one day of the dispute resolution package being made available by the Branch. Branch records show that the dispute resolution package was made available on August 11, 2020. Therefore, I find that the tenant was within the timeline set out by serving the landlord with the materials on August 12, 2020.

While the landlord disputes receiving the tenant's application and materials, they were unable to provide a cogent reason why registered mail sent to an address provided on the written tenancy agreement as the address for service of the landlord could not be delivered.

Residential Tenancy Policy Guideline 12 sets out that:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find that there is overwhelming documentary evidence to support the tenant's position that they served the landlord with the materials in accordance with the Act. I find the landlord's refutation to not be supported in any materials, provide no reasonable explanation of why they were not served, and have little air of truth.

Therefore, in accordance with sections 88, 89 and 90 of the Act, I find that the landlord is deemed to have been served with the tenant's application and materials on August 17, 2020, five days after mailing.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession for the rental unit?

Background and Evidence

The parties entered a periodic tenancy agreement commencing February 2019. The tenant submitted a copy of the written tenancy agreement into evidence. The written agreement is signed by the parties and identifies the address being rented.

The tenant submits that the landlord unilaterally changed the locks to the rental property and they have been barred entry since July 23, 2020. The tenant seeks access to the rental unit in accordance with the tenancy agreement.

The landlord testified that the tenant gave notice to end the tenancy and they vacated the rental unit prior to the landlord changing the locks to the unit.

Analysis

In accordance with section 54 of the Act a tenant who has entered into a tenancy agreement may request an order of possession of the rental unit.

Based on the evidence I find that there is a valid tenancy agreement between the parties commencing in February 2019 and continuing on a month-to-month basis. I find that the tenancy agreement provides the tenant exclusive use of the rental unit in exchange for rent in the amount specified.

I accept the evidence of the parties that the landlord has changed the locks to the rental unit and the tenant has been denied access to the rental unit.

While the landlord gave some testimony about the tenancy having been ended by the tenant, I find little evidence in support of their submissions which are disputed by the tenant. I find insufficient evidence that this tenancy has ended and find that there is a valid ongoing tenancy agreement between the parties and the tenant is therefore entitled to an Order of Possession of the rental unit.

Conclusion

I grant an Order of Possession in the tenant's favour effective two (2) days after service on the landlord. Should the landlord 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: September 4, 2020

Residential Tenancy Branch