



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding VANCOUVER NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with a landlord's application for an Order of Possession for cause.

The landlord's agents appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the landlord's proceeding package and evidence. The landlord's agent testified the proceeding package was sent to the tenant via registered mail on March 27, 2023. The landlord's agent orally provided me with the Canada Post tracking number which I have recorded on the cover page of this decision. A search of the registered mail tracking number showed the registered mail was delivered to a concierge or front desk on March 28, 2023. The landlord's agent testified that the front desk staff would have then delivered it to the tenant. I instructed the landlord's agent to provide me with evidence that occurred.

The landlord's agent uploaded a copy of a "shift report" for March 28, 2023 whereby the front desk staff person describes under the rental unit number that a package was received on that date, via courier, and delivered it to the tenant in person.

Based on the evidence before me, I am satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord's agents without the tenant present.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The tenancy started on February 16, 2021 and the tenant is required to pay \$375.00 in rent on the first day of every month. The landlord collected a security deposit of \$689.00. The landlord confirmed the tenant's rent is subsidized.

The building manager testified that she served the tenant with a One Month Notice to End Tenancy for Cause ("One Month Notice") by placing it in an envelope and attaching the envelope to the door of the rental unit, with tape, on February 8, 2023. The landlord provided a signed Proof of Service form and a photograph of an envelope taped to the rental unit door.

The One Month Notice was submitted into evidence and I note that it is in the approved form and is duly signed and completed. The stated effective date reads March 10, 2023.

The landlord's agents confirmed they were not served with any documents to indicate the tenant had filed to dispute the One Month Notice but the tenant continues to occupy the rental unit. The landlord acknowledged they did receive rent for the months of April 2023 and May 2023 while awaiting this hearing.

Analysis

Section 55(2) of the Act provides that a landlord may seek an Order of Possession where:

(b) 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;

In this case, I accept the landlord served the tenant with a One Month Notice by attaching it to the rental unit door on February 8, 2023. Under section 90 of the Act, the tenant is deemed to have received the notice three days later, on February 11, 2023.

A tenant in receipt of a One Month Notice has 10 days to file to dispute a One Month Notice. Accordingly, the tenant had until February 21, 2023 to file an Application for Dispute Resolution to dispute the One Moth Notice but the tenant did not.

Under section 47(5) of the Act, where a tenant receives a One Month Notice does not dispute the notice within the time limit for doing so, the tenant is:

- (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.

Upon review of the One Month Notice, I find it to be in the approved form and it is duly signed and completed. The effective date is incorrect and automatically changes to read March 31, 2023 under section 53 of the Act. Therefore, I find the tenancy ended effective March 31, 2023 and the tenant should have vacated the rental unit by that date.

The landlord filed this Application for Dispute Resolution seeking an Order of Possession on March 22, 2023 putting the tenant on notice as to the landlord's intention to regain possession of the rental unit. As such, I am satisfied the landlord did not act in such a way so as to communicate reinstatement of the tenancy. Since the tenant has remained in possession of the rental unit while awaiting this hearing, I find it reasonable that the landlord would accept monies for the tenant's continued occupation of the rental unit in April and May 2023.

In light of the above, I find that all of the criteria for granting the landlord an Order of Possession under section 55(2) of the Act have been met and I grant the landlord's application.

Provided to the landlord is an Order of Possession effective two (2) after service.

The landlord did not request recovery of the filing fee and I make no such award.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service.

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: May 26, 2023

Residential Tenancy Branch