



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PUSHOR MITCHELL LLP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, O, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for an Order of Possession based on a notice to end tenancy for cause and to recover the filing fee. The Landlord also applied for ‘Other’ issues but none were identified during the hearing.

Legal counsel for the Landlord and the Landlord named on the Application appeared for the hearing. Legal counsel presented the written evidence and made submissions on behalf of the Landlord during the hearing.

The Tenants failed to appear for the 17 minute duration of the hearing and did not provide any written evidence in advance of the hearing.

Legal counsel explained that the Tenants had been served with a copy of the Application and the Notice of Hearing documents by registered mail on August 28, 2014. The Canada Post tracking number and delivery report was provided in written evidence for this method of service. The Canada Post report shows that the documents were attempted to be delivered but were returned as unclaimed.

Section 90(c) of the Act provides that a document served by mail 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 or use this as grounds alone to have a review of this decision.

Therefore, I find that in the absence of any evidence from the Tenant to dispute this, the Landlords met their service obligations by serving the required documents to the Tenants pursuant to Section 89(1) (c) of the Act.

As a result, I turned my mind to the Landlords’ Application for an Order of Possession by considering the undisputed evidence presented during the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Legal counsel confirmed that a written tenancy agreement had been completed for this tenancy which began on July 1, 2010 for a fixed term of five years. Rent under the agreement was established in the amount of \$3,000.00 payable on the first day of each month and no deposits were requested or paid at the start of the tenancy.

Legal counsel explained that the Tenants were served with a 1 Month Notice to End Tenancy for Cause (the "Notice") on July 25, 2014. The Notice was personally handed by the Landlord to one of the Tenants at the rental suite. In her written affidavit, the Landlord testified that the Notice served to the Tenant on July 25, 2014 was signed and dated; however, a copy of the original Notice was not retained prior to service and as a result the Landlord provided an unsigned copy in written evidence for this hearing.

Legal counsel explained that the unsigned copy provided in written evidence was an electronic copy of the Notice, which was identical to the one served to the Tenants which did contain the Landlord's signature and was dated for July 25, 2014. The Notice has a vacancy date for August 31, 2014.

Legal counsel explained that the Tenants had not disputed the Notice and had not paid rent for October, 2014. The Landlords now seek an Order of Possession based on the undisputed Notice.

Analysis

I have examined the Notice, and I accept the evidence of the Landlords that a Notice, which complied with the requirements of Section 52 of the Act, was personally served to the Tenants in accordance with Sections 88(a) and (e) of the Act on July 25, 2014.

Section 48(5) of the Act allows a Tenant to dispute a Notice by making an Application within ten days of receiving the Notice. Furthermore, Section 48(6) of the Act states that if a Tenant fails to make an Application within ten days, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date.

Based on the foregoing, as the Tenants failed to make an Application to dispute the Notice and the effective date of the Notice has now passed, and the Tenant has failed to pay rent for October, 2014, the Landlords' request for an immediate Order of Possession is granted.

Since the Landlords have been successful in this Application, I also find they are entitled to recover the \$50.00 filing fee from the Tenants for the cost of having to make this Application to give effect to the ending of the tenancy, pursuant to Section 72(1) of the Act.

Conclusion

For the reasons set out above, I grant the Landlords an Order of Possession effective **two days after service on the Tenants**. This order must be served onto the Tenants and may then be filed and enforced in the Supreme Court as an order of that court.

As the Landlords do not hold any of the Tenants' deposits, I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$50.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

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: October 21, 2014

Residential Tenancy Branch

