



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

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, and an order to recover the cost of filing the application from the tenants.

The landlord attended the hearing. As the tenants 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 respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The legal counsel submits that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on January 30, 2020, which the tenants refused service on January 31, 2020. Canada post tracking numbers were provided as evidence of service. Filed in evidence is proof the tenants refused service.

I find that the tenants were served on January 31, 2020. Refusal of the package does not override the service provision under the Act.

Legal counsel appeared gave submission on behalf of the landlord.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

Counsel for the landlord stated that the landlord hired a process service, who went to the premise several times to serve the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") issued on October 3, 2019.

An affidavit of the process server LV, was submitted as evidence. The process server attended the premises on October 6, October 8, and October 12, 2019, which supports the tenants were evading service of the Notice.

The affidavit further shows the Notice was posted on the door on October 15, 2019. The Notice explains the tenants had ten days to dispute the Notice. The Notice further explains if the Notice is not disputed within the ten days that the tenants are presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice.

Analysis

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

In this case, I am satisfied that the tenants have been avoiding service. This is supported by the refusal to accept the Canada Post package and by the affidavit of the process server. A tenant cannot refuse service or avoid service under the Act.

I am satisfied that the tenants were served with the Notice on October 15, 2019, by posting to the door and were deemed served three days later, October 18, 2019.

I find the tenants did not apply to dispute the Notice and therefore conclusively presumed under section 46 (5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

I am satisfied based on the evidence submitted that the landlord has met the statutory requirements under the Act to end a tenancy.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the

Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

As the counsel submitted that they were not seeking a monetary order, I decline to award the filing fee.

Conclusion

The tenants failed to dispute the Notice. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession.

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: March 12, 2020

Residential Tenancy Branch