



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNL MT FF

This hearing dealt with application by the tenant to 1) allow her more time to make an application to cancel a Notice to End Tenancy; and 2) cancel a Notice to End Tenancy.

The tenancy began on August 15, 1995. A monthly rent of \$490.00 is payable in advance on the first of each month. On October 27, the landlord served the tenant by registered mail a Notice to End Tenancy for Landlord's Use of Property with an effective date of January 1, 2009.

The tenant said that her mail box in the apartment building is faulty. Therefore, since February 1996, she has been using a postal box located outside of the building for all her mail. She also contended that in 1996, she notified the landlord to send all her mail to this postal box. Instead, the landlord sent the Notice to End Tenancy by registered mail to her mail box in the building. For this reason, she did not receive this Notice to End Tenancy. Furthermore, she only became aware of this Notice when the landlord's wife telephoned her on December 1 to ask why she was paying the December rent.

The landlord said that he was never informed by the tenant that all her mail should be sent to a postal box located outside of the building. He added that when he received the tenant's documents pertaining to this dispute, he tried the tenant's mail box in the building with his key and it worked perfectly. At the time, he found no mail in the tenant's mail box including the two registered mail notices. Furthermore, the mail carrier would notify the landlord if a mail box was

stuffed full of unclaimed mail but the landlord received no such notification regarding the tenant's mail box.

The landlord also said that between December 18 and January 8, he slid folded up flyers into the tenant's mail box on six different occasions. On each occasion, the flyer would be removed and placed in a recycling box located underneath the mail box within two days.

The landlord also said that in early December, his wife had a telephone conversation with the tenant. During this conversation, the tenant acknowledged that she did receive the two registered mail notices but she was ill and could not respond to them. I have not given any weight to the landlord's testimony in this regard for the reason that it is hearsay evidence given by a third party who was not present in the hearing to testify.

The landlord also said that on November 13, 2007, he sent a notice of rent increase to the tenant for 2008 to her mail box in the building and the tenant acknowledged receiving this notice. As well, on December 3, 2007, the landlord gave every tenant in the building a Christmas gift by placing it in their mail boxes in the building. Thereafter, the tenant called the landlord to thank him for the gift. The tenant did not dispute the landlord's assertions as stated above.

Based on the above evidence, I find, on the balance of probabilities that the tenant did receive the two registered mail notices to pick up the landlord's Notice to End Tenancy in her mail box in the building. But she failed to respond to them. The tenant was served with the Notice to End Tenancy on October 27 by registered mail and she is deemed to have received this Notice after 5 days. The tenant did not file the application for dispute resolution until December 10 and I find no serious or compelling reasons to explain for her failure to file within the prescribed period of 15 days after her receipt of the Notice. Accordingly, I dismiss the tenant's application to allow her more time to make an application to cancel a Notice to End Tenancy. The tenant has not filed the application for dispute resolution within the prescribed period of 15 days after receipt of the

Notice, she is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of this Notice.

During the hearing, the landlord requested for an order of possession and I find that he is entitled to an order of possession. The tenant must be served with an order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I dismiss the tenant's application to recover the filing fee for the cost of this application.

Dated: January 09, 2009