



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with a copy of the Application and Notice of Hearing (the “hearing package”) by registered mail on February 7, 2011. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on October 16, 2008. On February 4, 2011, an agent for the Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated February 4, 2011. Neither of the Parties submitted a copy of the Notice as evidence at the hearing.

Based on a witness statement and newspaper articles filed by the Tenant, the Notice was apparently served on the Tenant as a result of an incident that occurred on January 31, 2011 when a guest of the Tenant’s was locked in a shed on the rental property by a 3rd party who then set the shed on fire. It is not clear whether the 3rd party was permitted on the rental property by the Tenant or not. In any event, the Landlord did not provide any evidence in support of the One Month Notice.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. Section 52 of the Act also says that in order to be enforceable, a Notice to

End Tenancy must contain specific information (that is listed) and when given by a Landlord, it must also be in the approved form.

In the absence of a copy of the One Month Notice to End Tenancy for Cause, I cannot conclude that the Tenant was served with an enforceable Notice to End Tenancy. Furthermore, in the absence of any evidence to support the Notice, I find that there is insufficient evidence to uphold the One Month Notice to End Tenancy for Cause dated February 4, 2011 and it is cancelled. As the Tenant has been successful in this matter, I find that she is entitled to recover from the Landlord, the \$50.00 filing fee she paid for this proceeding.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated February 4, 2011 is cancelled and the tenancy will continue. A Monetary Order in the amount of **\$50.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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: February 21, 2011.

Residential Tenancy Branch