



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated September 15, 2011. The oral hearing via teleconference started at 9:00 a.m. as scheduled, however by 9:10 a.m. the Applicant – Tenant had not dialled into the conference call. Consequently, the hearing proceeded in the Applicant - Tenant's absence.

Issue(s) to be Decided

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

Background and Evidence

The Landlord's witness said on September 16, 2011, he served the Tenant with a One Month Notice to End Tenancy for Cause dated September 15, 2011 by posting it to the rental unit door. In the Tenant's written submissions on her application, she claimed she received the One Month Notice on September 28, 2011.

Analysis

Section 90 of the Act says that a document served by posting it is deemed to be received by the recipient 3 days later. In the absence of any oral or other reliable evidence from the Tenant to the contrary, I find that the Tenant received the One Month Notice to End Tenancy on September 19, 2011.

Section 47(4) of the Act says that if a Tenant wishes to dispute a One Month Notice to End Tenancy for Cause, they must apply for Dispute Resolution to cancel the Notice within 10 days of receiving the Notice. If a Tenant does not do so, then pursuant to s. 47(5) of the Act, the Tenant is deemed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit on that day.

Consequently, the Tenant had until September 29, 2011 to apply for Dispute Resolution. The Tenant applied to cancel the One Month Notice to End Tenancy for Cause on October 7, 2011. Consequently, I find that the Tenant filed her application outside of the time limits required under s. 47(4) of the Act and as a result her application is dismissed without leave to reapply. I further find that the Tenant's application must be dismissed due to a lack of any evidence.

The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect on the effective date of the One Month Notice or October 31, 2011 at 1:00 p.m.

Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect on October 31, 2011 has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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 31, 2011.

Residential Tenancy Branch