



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. To cancel a Notice to End Tenancy given for cause (repeated late payment of rent);
2. A monetary order for compensation for damage or loss; and
3. An Order that the landlord comply with the Act.

Both parties appeared at the hearing of this matter and gave evidence under oath.

The landlord testified that she served the Notice seeking to end this tenancy by sending it by way of registered mail on April 10, 2012. The landlord provided tracking information which shows the letter was sent on April 10, 2012 and the item was attempted to be delivered on April 17, 2012 at which time a notice was left at the rental unit advising the tenant that there was an item available for pick up by her. The tenant did not attend to pick up the registered mail and a second notice was sent on April 23, 2012.

The tenant testified that due to her work, she was unable to attend at the post office to pick up the item when notified of its arrival on April 17, 2012. The tenant stated that the Notice from the post office did not indicate that the item was registered mail.

Section 90 of the Residential Tenancy Act states as follows:

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

The evidence in this matter is that the landlord mailed the Notice to End Tenancy to the tenant on April 10, 2012. The Act sets out that the Notice is deemed served on the 5th day after it was mailed. In this matter the tenant acknowledges receiving notification of an item waiting for her at the post office but she declined to pick it up.

As the tenant declined to pick up the registered letter the tenant's application seeking to dispute the Notice to End Tenancy is filed out of time. It is therefore dismissed.

The landlord has requested an Order of Possession. When a tenant's application seeking to cancel a Notice to End Tenancy is dismissed and the landlord requests an Order of Possession the landlord is entitled to that Order, this is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

With respect to the tenant's claim for compensation for loss of use of the rental unit I find that the tenant has proven that she should receive some compensation for the loss of enjoyment and use of the rental unit during roof repairs. I find that she is entitled to the sum of \$191.00 for her loss. The tenant has received an Order to this effect enforceable as any Order of the Provincial 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: May 23, 2012.

Residential Tenancy Branch