



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and FF

Introduction

This hearing was convened on an application by the tenant on November 8, 2012 seeking to have set aside a Notice to End Tenancy for cause served by posting on the tenant's door on November 3, 2012 with an effective date of December 31, 2012. The tenant also sought to recover the filing fee for this proceeding from the landlord.

Despite having been served with the Notice of Hearing sent by registered mail on November 13, 2012, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. The tenant stated, and Canada Post tracking services verify, that the landlord refused service on November 15, 2012. Nevertheless, service is deemed to have been made five days after service under section 90(a) of the *Act*, and the hearing proceeded in the absence of the landlord.

Issue(s) to be Decided

Should the Notice to End Tenancy of November 3, 2012 be upheld or set aside?

Background and Evidence

The tenant gave evidence that this tenancy began on or about January 1, 2005. Rent is \$560 per month and the tenant paid a security deposit at the beginning of the tenancy but he does not recall the exact amount.

The tenant stated that the Notice to End Tenancy alleged that he had tracked mud in the hallway and staircase of the rental building.

The tenant stated that he works in a mine, but changes out of his work boots before leaving work for the day and is habituated to wiping his feet carefully before proceeding into the rental building. He stated that he had told the landlord that if he had soiled the carpet, he would happily clean up, but that did not satisfy the landlord.

Analysis

Section 47(1)(f) of the *Act* provides for the issuance of a Notice to End Tenancy for cause where a tenant or guest has caused extraordinary damage to the rental property. However, I cannot find that a single, unproven incident of tracking mud on the floor would constitute reasonable cause to end the tenancy. Therefore, the Notice to End Tenancy of November 3, 2012 is set aside and is of no force or effect.

I further find that the tenant is entitled to recover the filing fee for this proceeding and as authorized under section 72 of the *Act*, I order that he do so by withhold \$50 of the rent for January 2013.

In addition, I have enclosed a copy of our publication, "A Guide for Landlords and Tenants in British Columbia" with each party's copy of this decision.

Conclusion

The Notice to End Tenancy is set aside, the tenancy continues, and the tenant is authorized to retain \$50 of the January 2013 rent to recover of his filing fee from the landlord .

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: December 12, 2012.

Residential Tenancy Branch