



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a 10 day Notice to End Tenancy for unpaid rent. The hearing was conducted by conference call. The tenant called in and participated in the hearing. No one called into the hearing on behalf of the landlord. The tenant sent a copy of the application for dispute resolution and Notice of Hearing to the landlord by registered mail on December 21, 2012. The registered mail was sent to the address provided by the landlord on the Notice to End Tenancy as the landlord's address for service, but the registered mail was returned to the tenant undelivered with a notation by the post office that the landlord's address was incomplete. The tenant mailed the documents to the address provided by the landlord and, pursuant to section 90 of the *Residential Tenancy Act*, they are deemed to have been received on the fifth day after mailing. The landlord cannot prevent a tenant from applying to dispute a Notice to End Tenancy by failing to provide a proper address for service and I find that the landlord has been validly served with the application pursuant to the deeming provisions of section 90 of the *Residential Tenancy Act*.

Issue(s) to be Decided

Should the Notice to End Tenancy dated December 15, 2012 be cancelled?

Background and Evidence

The rental unit is an apartment in New Westminster. The tenancy began on October 1, 2012 for a one year fixed term ending September 30, 2013. The monthly rent is \$600.00. The tenant paid a \$300.00 security deposit.

The rental property was sold to the current landlord in December, 2012. The tenant paid December rent to the former landlord by post dated cheque on December 1, 2012. The new owner of the rental property served the tenant with a 10 day Notice to End Tenancy dated December 15, 2012. The Notice alleged that the tenant failed to pay rent in the amount of \$600.00 that was due on December 1, 2012. The tenant has provided a copy of the cancelled cheque in payment of December's rent to the former

landlord and she has provided bank records to confirm that the cheque was successfully negotiated and funds in the amount of \$600.00 withdrawn from her bank account on December 4, 2012.

The tenant said at the hearing that the landlord threatened to have a bailiff evict her and that he has told her he wants her to move out so he can perform renovations to the rental unit.

Analysis and conclusion

I am satisfied that the tenant paid rent for the month of December, 2012 to her former landlord and that there is no basis for the 10 day Notice to End Tenancy dated December 15, 2012 that was served upon the tenant. I order that the Notice to End Tenancy be, and is hereby cancelled. The tenancy will continue until terminated in accordance with the *Residential Tenancy Act*.

With respect to the prospect of an eviction for renovations I referred the tenant to section 49 (2) (c) of the *Residential Tenancy Act* which provides that a two month Notice to End Tenancy for landlord's use may not end a tenancy before the end of the fixed term, which in this case is September 30, 2013.

The tenant is entitled to recover the \$50.00 filing fee for this application. She may deduct the said sum from a future installment of rent payable to 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: January 23, 2013

Residential Tenancy Branch

