

# **Dispute Resolution Services**

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Hume Investments Ltd. and [tenant name suppressed to protect privacy]

# DECISION

# Dispute Codes:

MT, CNC, ERP, SS, FF

# Introduction

This Hearing was scheduled to hear the Tenant's application for an extension of time to cancel a Notice to End Tenancy for Cause; to cancel a One Month Notice to End Tenancy for Cause (the "Notice"); an Order that the Landlords make emergency repairs; an Order allowing the Tenant to serve the Landlords with documents in a different way than required by the Act; and to recover the cost of the filing fee from the Landlords.

Both parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlords with the Notice of Hearing documents by registered mail. The Tenant did not recall what day he sent the documents, but the Landlord MB ("MB") acknowledged that he received them "well within time".

The Tenant ("IB") provided late documentary evidence to the Residential Tenancy Branch, but did not serve the Landlords with copies of the documents. Therefore, I explained to IB that I would not consider his documentary evidence, but that I would take his verbal testimony with respect to the contents.

MB testified that he served the Tenant with copies of the Landlords' documentary evidence. The Tenant acknowledged receiving the documents.

#### **Preliminary Matters**

The Application for Dispute Resolution was amended to reflect the correct spellings of the Landlords' names.

IB seeks an extension of time to file his application to cancel the Notice. IB filed his application at Service BC on Monday, September 23, 2013. He testified that he received the Notice on September 11, 2013. IB did not provide a copy of the Notice in Evidence. IB stated that he delayed filing his application to cancel the Notice because he tried to phone MB to speak with him about the Notice, but he would not take his calls.

MB testified that he served IB with the Notice on August 4, 2013, at 12:15 p.m. by posting the document to IB's door. The Landlords provided a copy of the Notice in evidence.

Evidence is important and must be provided to the Residential Tenancy Branch and to the other party before the Hearing. Instructions with respect to the service of documents were provided to the parties in the Notice of Hearing package. Deadlines are critical.

The Landlords provided a copy of the Notice, which is dated August 4, 2013. On the balance of probabilities, I prefer MB's testimony with respect to when the Notice was served. I find it improbable that MB would issue a notice to end tenancy on August 4, 2013, and not serve IB with the notice until September 11, 2013.

Section 66(1) of the Act provides that an extension of time can be granted only in exceptional circumstances. I find that IB provided insufficient evidence that there were exceptional circumstances that prevented him from filing his application to cancel the Notice within the legislated 10 day time frame. Therefore his application for an extension of time is **dismissed**.

I find that the Notice issued August 4, 2013, complies with the requirements of Section 52 of the Act and I uphold the Notice. Section 47(5) of the Act provides that if a tenant does not dispute a notice to end tenancy for cause within 10 days of receiving the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Order.

MB requested an Order of Possession.

#### <u>Analysis</u>

Section 55(1) of the Act states:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

MB testified that he posted the Notice to IB's door on August 4, 2013. Section 90 of the Act provides that service in such a manner is effective 3 days after posting. Therefore, I

find that IB received the Notice on August 7, 2013. I find that the effective date of the end of the tenancy was September 30, 2013, and that the Landlords are entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

#### **Conclusion**

The Tenant's application is dismissed without leave to re-apply.

I hereby provide the Landlords with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme 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: November 01, 2013

Residential Tenancy Branch