



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 667707 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, LAT, OLC, RP, PSF, LRE, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with her amended Application for Dispute Resolution hearing package ("Application") on October 23, 2014 via registered mail. The tenant provided a Canada Post tracking number orally during the hearing. The landlord testified that he received the Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the Application on October 28, 2014, the fifth day after its registered mailing.

At the hearing, I advised both parties that I would only be dealing with the central issue of the 10 Day Notice, and that I would be severing the other claims made by the tenant, as noted above. I took this action in accordance with section 2.3 of the Residential Tenancy Branch's Rules of Procedure as it appeared to me that the central issue was whether or not this tenancy was to end on the basis of the 10 Day Notice.

Issue(s) to be Decided

Should the tenant be allowed more time to make an application to cancel the 10 Day Notice?

Should the landlord's 10 Day Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Preliminary Issue – Landlord's Service of the 10 Day Notice

The landlord gave sworn testimony that he personally delivered the 10 Day Notice, to the tenant's male friend, SG, at the rental unit on October 9, 2014. Section 88(e) of the Act permits the landlord to serve the 10 Day Notice "by leaving a copy at the person's residence with an adult who apparently resides with the person." The landlord testified that SG was the tenant's male friend who stayed over at the tenant's rental unit frequently.

The tenant testified that SG was her friend but he did not live at the rental unit with her. The tenant provided a written tenancy agreement with her Application which only lists her alone as a tenant. The landlord testified that the tenant was the sole tenant on the tenancy agreement. The tenant testified that SG was at her rental unit on October 9, 2014 because he was watching her children while she was away at work. The tenant further confirmed that SG was advised by the landlord to take the 10 Day Notice and sign an acknowledgment that he received the letter on October 9, 2014. The tenant provided written evidence with her application, including SG's October 10, 2014 letter. This letter states that SG was at the tenant's rental unit watching her children. The letter further states that the landlord came over and "told me to sign the paper, that she was to get. I told him I didn't live here he said it was ok I was here thats all that mattered." The landlord denied in his sworn testimony that SG advised him on October 9, 2014 that he did not live at the tenant's rental unit.

Analysis

Although I heard considerable evidence from both parties regarding a number of issues relating to payment of rent and the terms of this tenancy, the central issue is whether the tenant was prejudiced by the method of service delivery of the 10 Day Notice.

Section 88(e) of the Act requires the landlord to serve the 10 Day Notice “by leaving a copy at the person’s residence with an adult who apparently resides with the person.” I find that the landlord, by serving SG personally, did not leave a copy with an adult who apparently resided with the tenant. The tenant has provided written documentary evidence, in addition to her testimony, to support her position. The tenant was the sole tenant occupying the rental unit, as confirmed by the tenancy agreement and the tenant’s testimony. SG specifically advised the landlord on October 9, 2014, that he did not live at the rental unit, as evidenced by his own handwritten letter, dated October 10, 2014, and confirmed by the tenant’s testimony.

The landlord has not provided any written documentary evidence supporting his position that SG “apparently resides” with the tenant. He has merely stated in his testimony that SG stays over at the tenant’s rental unit frequently. However, the landlord has not demonstrated how he acquired this knowledge.

On a balance of probabilities, and for the reasons outlined above, I prefer the tenant’s evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was not properly served with the 10 Day Notice on October 9, 2014. Although the tenant received the 10 Day Notice on a later date, I find that she was prejudiced by the method that the landlord chose to provide the 10 Day Notice to her and, as a result, the tenant was unable to respond to the 10 Day Notice within the required five days as per Section 46(4) of the Act. I find that the tenant was further prejudiced by the landlord’s actions, as she was unable to produce sufficient evidence to support her application within the required timelines of the Residential Tenancy Branch Rules of Procedure. I find that the tenant was prejudiced by the landlord’s method of service delivery and find that the tenant was not served in accordance with Section 88 of the Act.

Accordingly, the 10 Day Notice is of no force and effect, as it was improperly served upon the tenant. The 10 Day Notice is effectively cancelled, as it is now past the effective move-out date identified in the notice, October 20, 2014.

For the above reasons, I allow the tenant’s application to cancel the landlords’ 10 Day Notice. As the 10 Day Notice is cancelled, the tenant’s application for more time to make an application to cancel the 10 Day Notice is moot.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The landlord's 10 Day Notice, dated October 9, 2014, is cancelled and of no force and effect. The tenancy continues.

I issue a monetary order in the tenant's favour in the amount of \$50.00 against the landlord. The tenant is provided with a monetary order in the amount of \$50.00 in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I advised the tenant that she would need to make another application for dispute resolution if she intended to pursue the other issues that were severed from this application, as noted above.

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 14, 2014

Residential Tenancy Branch

