



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The applicants failed to contact the telephone bridge number at the scheduled start of the hearing. The respondent was present and ready to proceed. The telephone line conference line remained open and the phone system was monitored. The hearing was concluded as the applicants still had not appeared after waiting 10 minutes.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated October 30, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Determination and Orders

The applicants failed to appear at the hearing. The respondent was present and ready to proceed. **I ordered that the application be dismissed without leave to re-apply.** The failure of a party to appear at a hearing is consistent with a party's intention to abandon the claim.

There is an issue as to the effective date of the Notice to End Tenancy. For the reasons to follow I determined the tenants received the Notice to End Tenancy on October 31, 2014 and the end of tenancy date is December 31, 2014 (as set out in the Notice). Had I found that the tenants received the Notice to End Tenancy in November the end of tenancy date would be extended to January 31, 2015 in accordance with the provisions of the Residential Tenancy Act. Further, the tenants would be responsible to an extra month rent (subject to their right to give a 10 day Notice). In the circumstances where

the tenants did not attend the hearing and provide evidence as to when they received the Notice to End Tenancy, it would not be appropriate to go beyond the end of tenancy date set out in the Notice (December 31, 2014) by setting an end of tenancy date for January 31, 2015. To do so would prejudice the tenants by requiring them to pay an additional month rent.

Order for Possession

Section 55(1) of the Residential Tenancy Act provides as follows:

Order of possession for the landlord

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 the landlord's notice.

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

The landlord requested an Order for Possession after the dismissal of the tenant's claim. She testified she posted the two month Notice to End Tenancy on the door on October 30, 2014 and texted a picture of the Notice to the tenant the next day.

Normally such a Notice is not deemed served until 3 days after posting. However, the tenant in a signed written submission stated "- on October 31, 2014 a Notice to End Tenancy was Taped to the front door of the residence..." I ordered pursuant section 71 of the Residential Tenancy Act that the two month Notice was sufficiently received by the Tenants for the purpose of this Act on October 31, 2014 based on the following:

- The landlord was texted message a copy of the Notice to them on that date,
- The tenants acknowledged it was posted on that date in their written submission
- The tenants did not attend the hearing or provide other evidence as to receiving it on a later date.

- Had the tenants attended the hearing the landlord could have asked them questions as to when they received the Notice to End Tenancy.

In summary I determined the landlord has proven on a balance of probabilities that the two month Notice to End Tenancy was received by the tenant's on October 31, 2014 as the tenants were aware of the contents of the Notice to End Tenancy on that date.

As a result I granted the landlord an Order for Possession effective December 31, 2014 which is the end of tenancy date set out in the two month Notice to End Tenancy.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 16, 2014

Residential Tenancy Branch

