



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMITA HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

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

- cancellation of the landlord's two 2 Month Notices to End Tenancy for Landlord's Use of Property, dated December 23, 2014 and January 6, 2015 ("two 2 Month Notices"), pursuant to section 49.

The landlord did not attend this hearing, although it lasted approximately 20 minutes. The landlord did not file any evidence in respect of this application. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant gave sworn testimony that the landlord's first 2 Month Notice, dated December 23, 2014, which states an effective move-out date of February 28, 2015, was served upon him personally around December 28, 2014. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on December 28, 2014.

The tenant testified that the landlord's second 2 Month Notice, dated January 6, 2015, which states an effective move-out date of March 31, 2015, was served upon him personally around January 6, 2015. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on January 6, 2015.

The tenant testified that he served the landlord with his Application for Dispute Resolution hearing package ("Application") on January 13, 2015, by way of registered mail. The tenant provided a Canada Post receipt and tracking number as proof of service, with his Application. The tenant also provided a tracking printout with a signature, from the Canada Post website, indicating that the landlord received and signed for the package on January 15, 2015. In accordance with sections 89 and 90 of

the *Act*, I find that the landlord was deemed served with the tenant's Application on January 18, 2015, the fifth day after its registered mailing.

Preliminary Matters

During the hearing, the tenant requested an amendment to his Application, to substitute the relief claimed in his Application. The tenant testified that he initially applied, in error, to cancel a 1 Month Notice for Cause, rather than to cancel two 2 Month Notices for Landlord's Use of Property.

In accordance with my authority under section 64(3)(c) of the *Act*, I amend the tenant's Application to substitute the correct relief that the tenant intended to apply for, to cancel both 2 Month Notices and not to cancel a 1 Month Notice. This change is reflected in the introduction portion of this decision. I find that the landlord would not be prejudiced by this amendment, as the details of the dispute in the tenant's Application clearly advised the landlord of the tenant's intention to pursue a cancellation of both notices. Also, the tenant included both 2 Month Notices with his Application evidence. The landlord had notice of the tenant's Application when it was served by way of registered mail on January 13, 2014, which the landlord signed for on January 15, 2015. Therefore, even though the landlord did not attend the hearing, it had notice of the hearing and had an opportunity to appear to dispute the tenant's Application.

Issue to be Decided

Should the landlord's two 2 Month Notices be cancelled?

Analysis

In accordance with subsection 49(8) of the *Act*, the tenant must file his application for dispute resolution within fifteen days of receiving each 2 Month Notice. In this case, the tenant received the first 2 Month Notice on December 28, 2014 and the second 2 Month Notice on January 6, 2015. The tenant filed his application for dispute resolution on January 8, 2015 and then amended it on January 10, 2015. Accordingly, the tenant filed within the fifteen day limit under the *Act* for each 2 Month Notice.

Where the tenant applies to dispute two 2 Month Notices, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which both 2 Month Notices are based. The landlord did not submit any evidence or appear at this hearing. The landlord did not meet its onus of proof. I advised the tenant during the hearing that both

2 Month Notices are cancelled and of no force or effect and that this tenancy continues until it is ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel two 2 Month Notices. The landlord's two 2 Month Notices, dated December 23, 2014 and January 6, 2015, are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 29, 2015

Residential Tenancy Branch

