



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, FF	(Tenants' Application)
OPN, OPC, MNR, FF	(Landlord's first Application)
OPR, MNR, MND, MNSD, MNDC, FF	(Landlord's second Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants and two Applications made by the Landlord.

The Tenants made their Application on July 30, 2015 to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") served to them on July 23, 2015, and to recover the filing fee.

The Landlord made his first Application on August 17, 2015 for an Order of Possession based on the 1 Month Notice and a notice the Tenants had given to end the tenancy. In that same Application, the Landlord has also applied for a Monetary Order for unpaid rent and to recover the filing fee from the Tenants.

The Landlord made his second Application on September 8, 2015 for an Order of Possession based on a notice to end tenancy for unpaid rent. The Landlord also applied for a Monetary Order and to recover the filing fee.

The Landlord, the Landlord's advocate, the Landlord's wife, and both Tenants appeared for the hearing and provided affirmed testimony. The Tenants provided a copy of the 1 Month Notice into evidence as well as the Canada Post tracking number showing service of their documents for this hearing. However, no documentary evidence was provided by the Landlord in response to the Tenants' Application. I also noted that for both the Landlord's Applications, no documentary evidence was provided prior to the

hearing by the Landlord including a copy of the 1 Month Notice and a copy of the notice to end tenancy for unpaid rent which is a requirement for these types of Applications.

I first turned my mind to the service of the Applications by the parties. The Landlord testified that his first Application had been served to the Tenants personally on August 19, 2015. The Tenants denied being served with this Application. The Landlord called his wife to testify as a witness that she had served the Tenants personally with the first Application which the Tenants threw back at her. The Tenants denied this stating that he has not seen the Landlord or his wife since they were served with the 1 Month Notice.

The witness and the Landlord then changed their testimony and stated that it was a property manager who had served it on the Landlord's behalf as they were distant Landlords. The Tenant disputed this and asked for the representative to be made available to testify for this hearing to this effect. The Landlord explained that the representative resided in another city and was not available to testify.

I then asked the Landlord about the service of the second Application. The Landlord testified that he again personally served this to the Tenants on September 1, 2015. The Tenants denied service of the Landlord's second Application. However, I noted that the paperwork for the Landlord's second Application was not issued to the Landlord until September 11, 2015. Therefore, the Landlord could not have served the Tenants with the paperwork on September 1, 2015.

Based on the above inconsistencies with the Landlord's evidence in relation to the service of both Applications, I was not satisfied that the Tenants had been served with either one of them. Furthermore, I also noted that the Landlord had not supplied any documentary evidence prior to the hearing, including a copy of the notices to end tenancy. Therefore, I dismissed both of the Landlord's Applications with leave to re-apply.

I then turned my mind to the Tenants' Application. The Tenants confirmed that they had registered mailed their Application and hearing documents to the Landlord's address on August 6, 2015. The Landlord confirmed his mailing address but testified that he had not received the Tenants' Application. The Tenant confirmed that the Canada Post website relating to the tracking number stated that the Landlord refused to collect his mail despite several attempts to deliver it and notice cards left for the Landlord to collect it. The Tenant submitted that this was done in an effort to avoid service.

Policy Guideline 12 to the Act states that when a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the foregoing, and taking into consideration the Tenants' Canada Post evidence, I find the Tenants served the Landlord with the required documents in accordance with Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). As a result, the Landlord was deemed to have received the documents five days later. I informed the parties that the hearing would continue to hear the Tenants' Application which would be the only Application that would be decided upon in this hearing.

The Tenant confirmed receipt of the 1 Month Notice on July 23, 2015. The Tenants made their Application on July 30, 2015. Therefore, I determined that the Tenants had applied to dispute the 1 Month Notice within the 10 day time limit stipulated by Section 47(4) of the Act.

However, at the start of the hearing, the Tenants indicated that they wanted to move out of the rental unit as their relationship with the Landlord had deteriorated. The Landlord's advocate explained that they had plenty of documentary and photographic evidence in relation to the 1 Month Notice; however, he acknowledged that this had not been provided to the Residential Tenancy Branch prior to this hearing as was clearly required in the information the Landlord was given when he made his Applications.

I offered the parties an opportunity to end this tenancy on mutual terms. The parties engaged into a discussion, turned their minds to compromise, and reached a mutual agreement to end the tenancy.

Settlement Agreement

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The Landlord and Tenants agreed to end the tenancy on **November 30, 2015** at which point the Tenants are required to vacate the rental suite. As a result, the parties agreed to withdrew the 1 Month Notice. The Landlord is issued with an Order of Possession effective for this date at 1:00 p.m. This order may be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to vacate the rental

unit in accordance with the above agreement. Copies of the order are attached to the Landlord's copy of this decision.

The Tenants are required to pay rent for the time they have been and continue to occupy the rental unit. However, the remedies available to the parties for any breach of the Act in the interim time period are still available and in effect.

As the parties decided to mutually agree to end the tenancy, the Tenants' Application to recover the filing fee is dismissed. The parties confirmed during the hearing and at the end of the hearing that they had entered into this settlement agreement voluntarily and understood the full nature of the agreement and its meaning.

Conclusion

The Landlord failed to serve the Tenants with both of his Applications. Therefore, the Landlord's Applications are dismissed. However, the Landlord is at liberty to re-apply for any monetary claim which was not dealt with during this hearing.

The parties withdrew the 1 Month Notice and agreed to end the tenancy on November 30, 2015 at 1:00 p.m. However, the parties are at liberty to pursue remedies available to them for any breach of the Act in the interim period.

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: October 09, 2015

Residential Tenancy Branch

