



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE OWNERS STRATA VIS 2633
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, CNC, OLC, MT

Introduction

The hearing was convened in response to cross applications.

On December 18, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause.

The Agent for the Landlord stated that on December 24, 2015 he personally served the Tenant with the Application for Dispute Resolution, the Notice of Hearing, copies of the evidence the Landlord submitted to the Residential Tenancy Branch on January 11, 2016. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On December 14, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel an Order of Possession for Cause, for more time to apply to cancel a Notice to End Tenancy for Cause; and for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Act*.

The Agent for the Landlord stated that the Landlord has not been served with a copy of the Tenant's Application for Dispute Resolution.

On February 01, 2016 the Tenant submitted a copy of a One Month Notice to End Tenancy, dated October 20, 2105, and a note from a medical practitioner to the Residential Tenancy Branch. The Agent for the Landlord stated that the Landlord received these documents on February 01, 2016. As the documents were received by the Landlord, they were accepted as evidence for these proceedings.

On February 01, 2016 the Tenant submitted a FAX cover sheet to the Residential Tenancy Branch in which the Tenant indicates that she has been ill and has been trying to get help from an advocate. The Agent for the Landlord stated that the Landlord received a FAX cover sheet from the Tenant on February 01, 2016 however the cover sheet the Landlord received did not contain the same information as the cover sheet submitted to the Residential Tenancy Branch. As the Tenant did not serve the Landlord

with an identical copy of the cover sheet submitted to the Residential Tenancy Branch, as is required by rule 3.7 of the Residential Tenancy Branch Rules of Procedure, the cover sheet was not accepted as evidence.

Preliminary Matter

In the absence of evidence to establish that the Tenant has served the Landlord with her Application for Dispute Resolution and the fact she did not appear at the hearing on February 02, 2016, I find that the Tenant has abandoned her Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on April 01, 2010 and that the Tenant is still living in the rental unit.

The Agent for the Landlord stated that a former agent for the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause. The Landlord submitted a signed Proof of Service of Notice to End Tenancy in which the former agent for the Landlord declared that on October 20, 2015 she left the Notice to End Tenancy with an individual who is obviously over the age of 21 and who declared she was living with the Tenant. The Proof of Service appears to be signed by the person receiving the Notice to End Tenancy, in which she declares she is an adult who is temporarily living with the Tenant.

The Notice to End Tenancy for Cause declares that the Tenant must vacate the rental unit by November 30, 2015. The Notice also declares that the Tenant must move out of the rental unit by the date set out on the front page of the Notice if she does not dispute the Notice within ten days of receiving it.

Analysis

On the basis of the In the absence of the Proof of Service of Notice to End Tenancy submitted in evidence, I find that the Tenant was served with a One Month Notice to End Tenancy for Cause on October 20, 2015 in accordance with section 88(e) of the *Act*.

On the basis of the One Month Notice to End Tenancy for Cause submitted in evidence, I find that the Notice declared that the Tenant must vacate the rental unit by November 30, 2015.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it.

Residential Tenancy Branch records show that the Tenant did not file an Application for Dispute Resolution until December 14, 2015, which is more than ten days after she received the Notice to End Tenancy. I therefore find that the Tenant is conclusively presumed to have accepted that the tenancy was ending on November 30, 2015, pursuant to section 47(5) of the *Act*. As the Tenant is still occupying the rental unit and the tenancy ended on November 30, 2015, I find the Landlord is entitled to an Order of Possession.

I note that even if the Tenant had appeared at the hearing I could not have granted her more time to apply to cancel the Notice to End Tenancy. Section 66(3) of the *Act* prohibits me from extending the time limit to apply to dispute a Notice to End Tenancy beyond the effective date of the Notice. In these circumstances the Tenant did not file an Application for Dispute Resolution until fourteen days after the effective date of the Notice.

Conclusion

I grant the Landlord an Order of Possession that is effective at two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with 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: February 02, 2016

Residential Tenancy Branch

