



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MT, MNDC, OLC, FF, O

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Unpaid Rent, for more time to apply to cancel a Notice to End Tenancy, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for a monetary Order for money owed or compensation for damage or loss; for "other", and to recover the fee for filing this Application for Dispute Resolution.

The Tenant with the initials "J.J." stated that on December 21, 2015 he personally served the Landlord with the Application for Dispute Resolution. The Landlord acknowledged receipt of these documents. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On December 21, 2015 the Tenants submitted thirteen pages of evidence to the Residential Tenancy Branch. The Tenant with the initials "J.J." stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it cannot be accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

On January 25, 2016 the Landlord submitted 22 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to the Tenant, via registered mail, on January 25, 2016. The Agent for the Landlord cited a Canada Post tracking number that corroborates this testimony.

The Tenant with the initials "D.J." stated that the Tenants have not received the aforementioned evidence and have not received notice from Canada Post regarding this package.

Section 90 of the *Act* stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed. The earliest the Tenants would be deemed to have received the Landlord's evidence package that was mailed on January 25, 2016 would, therefore, be January 30, 2016.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates a respondent's evidence must be received by the applicant not less than 7 days before the hearing. Even if I determined that the Tenants received the evidence that was mailed on January 25, 2016 (which I have not), I would conclude that it was not served in accordance with the timelines established by rule 3.15.

As the Tenants do not acknowledge receiving the Landlord's evidence package and it was not served in accordance with rule 3.15 of the Residential Tenancy Branch Rules of Procedure, it was not accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?
Should the Tenants be granted more time to apply to cancel a Notice to End Tenancy?
Is there a need to issue an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement?
Are the Tenants entitled to a monetary Order?

Background and Evidence

Prior to discussing the merits of the Application for Dispute Resolution the Tenants and the Landlord mutually agreed to settle the issues in dispute in this Application under the following terms:

- the tenancy will end, by mutual consent, on February 29, 2016;
- the Tenants will pay the Landlord \$1,000.00 by February 10, 2016;
- the Tenants will pay outstanding utilities once they have had a chance to review the bills supplied by the Landlord;
- the Landlord will be granted an Order of Possession for the rental unit, effective February 29, 2016; and
- the Landlord will be granted a monetary Order for \$1,000.00 that is only enforceable if the Tenants do not pay \$1,000.00 to the Landlord by February 10, 2016.

Analysis

The Landlord and the Tenants have settled this dispute under the following terms.

Conclusion

On the basis of the settlement agreement the Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on February 29, 2016. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

On the basis of the settlement agreement the Landlord has been granted a monetary Order for \$1,000.00. In the event the Tenants do not pay \$1,000.00 to the Landlord by February 10, 2016 this Order may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This settlement agreement is recorded 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 04, 2016

Residential Tenancy Branch

