



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 643138 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on December 28, 2015 and to recover the filing fee cost from the landlord.

The tenant submitted that the Notice was received on February 3, 2016. The tenant applied to cancel the Notice on February 10, 2016.

The tenant provided affirmed testimony that on February 15, 2016 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord via registered mail to the address noted on the Application. A Canada Post tracking number, receipt and tracking information was provided as evidence of service.

The Canada Post tracking information showed that the mail was sent on February 15, 2016 and that the landlord failed to claim the mail. The mail was returned to the tenant. A copy of the envelope was submitted as evidence. The address used for service was the service address provided on the Notice ending tenancy.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act. A failure to claim registered mail does not allow a party to avoid service.

The landlord did not appear at the hearing to support the reasons given on the Notice.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. As the tenant did not receive the Notice until February 3, 2016, section 53 of the Act applies and that the Notice effective date is corrected to March 31, 2016. Therefore, I find that the tenant has applied to dispute the Notice within the applicable time limit.

As the landlord has the burden of proving the reasons on the Notice ending tenancy and failed to attend the hearing I find, pursuant to section 62(3) of the Act, that the one month Notice to end tenancy for cause issued on December 28, 2015 is of no force and effect and is cancelled.

The tenancy will continue until it is ended in accordance with the Act.

Pursuant to section 72 of the Act, I find that the tenant is entitled to deduct the \$100.00 filing fee from the next months' rent due.

Conclusion

The one month Notice ending tenancy for cause issued on December 28, 2015 is cancelled.

This decision is final and binding and 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: March 31, 2016

Residential Tenancy Branch