



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for cause.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

All parties were affirmed.

Issue(s) to be Decided

The first issue I dealt with is whether the application was filed within the required timeframe.

Background and Evidence

The Notice to End Tenancy was served on the tenants by registered mail, that was mailed on April 24, 2016.

The tenants provided all documents required for their fee waiver to the Residential Tenancy Branch on May 12th 2016.

Analysis

Section 90 of the Residential Tenancy Act states:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

Therefore, since the Notice to End Tenancy was mailed on April 24, 2016 it is deemed received on April 29, 2016.

Sections 47(4) & 47(5) of the Residential Tenancy Act state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution **within 10 days** after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Therefore since the Notice to End Tenancy is deemed to have been received on April 29, 2016, the tenants were required to make an application for dispute resolution by May 9, 2016.

Section 2.6 of the residential tenancy rules of procedure states:

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has been made when it has been submitted and the fee is paid or **all documents for a fee waiver are submitted** to the Residential Tenancy Branch directly or through a Service BC office.

In this case, as stated above all documents for the fee waiver were not submitted until April 12, 2016, and therefore the application was not made within the 10 day timeframe required under the Act. The tenants are therefore conclusively presumed to have accepted the end of the tenancy.

I therefore will not cancel the Notice to End Tenancy, and pursuant to Section 55 of the Residential Tenancy Act will issue an Order of Possession to the landlord.

The landlord has requested that the Order of Possession be issued for June 30, 2016.

Conclusion

I have issued an Order of Possession for 1:00 p.m. on June 30, 2016.

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: June 08, 2016

Residential Tenancy Branch