



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEONIC INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that he served the landlord with the notice of hearing package via Canada Post Registered Mail on June 17, 2016. The landlord confirmed receipt of the notice of hearing package in this manner. The tenant also stated that the landlord was served with the tenant's submitted documentary evidence in person on July 9, 2016. The landlord confirmed receipt of the tenant's submitted documentary evidence in this manner. The landlord served the first of three submitted documentary evidence packages to the tenant via "UPS" Courier on July 4, 2016. The tenant confirmed receipt of the landlord's first evidence package in this manner. The landlord stated that he did not serve the tenant with his second evidence package because he was too busy. The landlord stated that the third "late evidence" package was served to the tenant in person on July 16, 2016. The tenant confirmed receipt of the landlord's third evidence package in this manner and stated that the contents were not relevant in his opinion. The tenant stated there were no issues to proceed with the late evidence for the hearing.

I accept the undisputed affirmed evidence of both parties and find that as both parties have attended and have confirmed receipt of the notice of hearing package and the

submitted documentary evidence that both parties were properly served as per sections 88 and 89 of the Act, except the landlord's second evidence package. The landlord's second evidence package is excluded as the landlord failed to comply with sections 88 and 89 of the Act.

Preliminary Issue(s)

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for the landlord to comply with the Act by making proper elevator repairs and to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided regarding the elevator. The tenant provided direct testimony that these issues are unrelated to the notice to end tenancy. As this section of the tenant's application is unrelated to the main section which is to cancel the notice to end tenancy issued for cause, I dismiss this section of the tenant's claim with leave to reapply.

During the hearing it was noted and clarified with both parties that the tenant confirmed receipt of the 1 Month Notice on May 30, 2016 posted on his door. The landlord stated that he posted the 1 Month Notice on the rental unit door on May 27, 2016. Pursuant to section 90 of the Act, I accept the undisputed affirmed evidence of both parties that the landlord served the 1 Month Notice by posting it to the rental unit door on May 27, 2016 and that the tenant confirmed receipt of it on May 30, 2016. The tenant is deemed to have received the 1 Month Notice on May 30, 2016 which is 3 days later as per section 90 of the Act. Section 47 (4) and (5) of the Act states,

(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.

The tenant confirmed that he received the 1 Month Notice on May 30, 2016 and that he did not file for dispute resolution until June 16, 2016 which is 17 days after service. Section 47 (4) only allows for 10 days for the tenant to file an application for dispute of the notice. I note that the tenant in making his application also failed to make an application to be allowed more time to make an application for dispute pursuant to section 66 of the Act. As such, pursuant to section 47 (5) (a) and (b) the tenant is conclusively presumed to have accepted that the tenancy was at an end and must vacate the rental unit by that date. In this case, this required the tenant to vacate the premises by June 30, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The tenant's application is dismissed.

The landlord is granted an order of possession.

The order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in 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: July 22, 2016

Residential Tenancy Branch