



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for "other".

The Advocate for the Tenant stated that on July 14, 2016 she personally served the Application for Dispute Resolution and the Notice of Hearing to the Agent for the Landlord. The Agent for the Landlord stated that these documents were personally served to him on July 28, 2016. I find that these documents were served to the Landlord in July of 2016.

On July 28, 2016 the Tenant submitted four pages of evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was personally served to the Agent for the Landlord on July 28, 2016. The Agent for the Landlord stated that he did not receive these documents as evidence for these proceedings.

As the Landlord did not acknowledge receipt of the Tenant's four pages of evidence, it was not accepted as evidence for these proceedings. The Tenant was given the opportunity to proceed with the hearing today, with the understanding that he can give testimony regarding his documentary evidence but that the documents would not be physically viewed by me, or to request an adjournment for the purposes of re-serving his evidence to the Landlord. The Tenant opted to proceed with the hearing.

Residential Tenancy Branch records show that on August 26, 2016 the Landlord submitted 30 pages of evidence and a USB device to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence package was submitted to the Residential Tenancy Branch on August 03, 2016. The Agent for the Landlord stated that this evidence package was personally served to the Tenant on August 03, 2016.

The Tenant stated that he has a brain injury and he does not recall receiving the Landlord's evidence package. The Advocate for the Tenant stated that she does not have the Landlord's evidence package and she was not aware one had been served.

The Agent for the Landlord was advised that I would like to adjourn the hearing to provide the Landlord with the opportunity to re-serve the Landlord's evidence package, as I find that it would be unfair to the Tenant to consider documentary/digital evidence that he did not have access to. The Agent for the Landlord stated that he is willing to proceed with the hearing with the understanding that he will be able to testify regarding his evidence package.

Residential Tenancy Branch records show that on August 03, 2016 the Tenant submitted 13 pages of evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was not submitted by the Tenant, even though the first page of the package is a fax/email memo that indicates

it is evidence submitted on behalf of the Tenant. As the Tenant does not acknowledge submitting this evidence, it was not accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

At the outset of the hearing that Agent for the Landlord and the Tenant mutually agreed to settle all issues in dispute at these proceedings under the following terms:

- the tenancy will end, by mutual consent, on December 31, 2016;
- the Landlord will receive an Order of Possession, effective December 31, 2016; and
- the Tenant will permit the Landlord to retain his security deposit and key deposit of \$230.00 in compensation for a damaged window and pest control costs incurred up to this point in the tenancy.

Analysis

The Agent for the Landlord and the Tenant have mutually agreed to settle this dispute in accordance with the aforementioned terms.

Conclusion

On the basis of the settlement agreement I grant the Landlord an Order of Possession that is effective **at 1:00 p.m. on December 31, 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.

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: September 13, 2016

Residential Tenancy Branch