



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding West Kootenay Property Rentals Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, O, OPC

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a one-month Notice to End Tenancy, and a request for recovery of their \$100.00 filing fee.

The tenant's application is a request to cancel a one-month Notice to End Tenancy, a request for a monetary order for \$5906.61, and a request for recovery of the filing fee.

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

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the tenants put on their application.

Section 2.4 of the rules of procedure states:

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this case it is my finding that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the requests to uphold or cancel the section 47 Notice to End Tenancy, and the requests for recovery of the filing fees, and I dismiss the tenant's monetary claim, with liberty to re-apply.

Background and Evidence

The parties agree that this tenancy began on August 1, 2009 and the present monthly rent is \$1400.00, due on the first of each month.

The landlords testified that on January 23, 2017 they sent a section 47, one-month Notice to End Tenancy to the tenants address by registered mail.

The landlords further testified that, even though the notice was sent to the correct address, the tenants never claimed the registered mail. They further verified that they checked with Canada post and the registered mail notice was put in the proper mailbox.

The landlords are therefore requesting an Order of Possession based on that notice, as the tenants filed no dispute of the Notice to End Tenancy, and the time frame in which to file a dispute is now well past.

The tenants testified that they did receive the notice of registered mail in their mailbox, however they checked their mailbox infrequently, and, by the time they received the notice, the post office had already returned the item to the landlords.

The tenants are therefore requesting more time to dispute the claim.

Analysis

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are **deemed** served five days after mailing, (even if the recipients failed to check their mailbox or claim the registered mail), and therefore, since the Notice to End Tenancy was sent by registered mail on January 23, 2017, the notice is deemed served on January 28, 2017.

Further 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.

In this case, the tenants did not file their dispute of the notice until more than a month after it was deemed served, and I am not willing to grant such a long extension to file the dispute, especially since the end of tenancy date had passed before they even applied..

It is my decision therefore that I will not cancel the notice to end tenancy, and I will allow the landlords request for an Order of Possession for April 30, 2017, and for recovery of the \$100.00 filing fee.

Conclusion

Pursuant to sections 47 and 55 of the Residential Tenancy Act, I have issued an Order of Possession for 1:00 p.m. on April 30, 2017.

Pursuant to section 72 of the Residential Tenancy Act I have issued an order for the respondents to pay \$100.00 to the landlord for recovery of the filing fee.

The tenant's application to cancel the Notice to end tenancy is dismissed without leave to re-apply.

I further Order that the tenants bear the \$100.00 cost of the filing fee they paid.

The tenants request for a monetary order is dismissed with leave to re-apply.

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: March 27, 2017

Residential Tenancy Branch