



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1096686 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This is an Application for Dispute Resolution filed by the Tenant to cancel a Two-Month Notice to End Tenancy for Landlord Use of Property. The Tenant and his wife appeared for the hearing.

The Landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:25 a.m. in order to enable the Landlord to call into this teleconference hearing scheduled for 11:00 a.m. on May 1, 2018. The Tenant and his wife, NP, attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

The Tenant states that he served the notice of the hearing personally on PS, who indicated he was acting as an agent for the Landlord in the sale of the property. The Tenant stated that a year ago, another real estate acted on behalf of the Landlord and collected a year's worth of post-dated cheques for the rent; PS was identified as the new agent who also served the Tenant with the Two-Month Notice to End Tenancy on February 6, 2018 and the Tenant assumes that he was in a position to accept service.

The Tenant also stated that a copy of the hearing notice and evidence was mailed by registered mail on February 14, 2018 and he provided the mailing address and tracking number; however, a subsequent review of the tracking number indicated that the number was not on the system for Canada Post.

The Tenant stated that the property likely transferred to a new owner/developer on April 30th, who then agreed to sign a new tenancy agreement on April 23, 2018 for a one year term. Evidence was submitted which included an email with a city department confirming that no permits to rezone the property had been received. The Tenant signed the new tenancy agreement and has no plans to relocate.

Issues

Should the Two-Month Notice to End Tenancy for Landlord Use of Property be cancelled, pursuant to section 49 of the *Residential Tenancy Act* (the “Act”)?

Is the Tenant entitled to payment for the filing fee of \$100.00, pursuant to section 72 of the Act?

Analysis and Conclusion

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

Under section 89 of the Act, it states:

“(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;”*

The Policy Guideline 12, paragraph 7 states that “...if the landlord does not attend the hearing, the tenant will have to provide sufficient evidence to the Arbitrator to prove that the address used is in fact the address at which the landlord carries on business as a landlord.”

The address which the Tenant testified was used for the registered mail does not match the address for service for the Landlord as noted on the April 1, 2017 tenancy agreement submitted into evidence. Furthermore, I cannot confirm through the tracking number that a package was ever received by Canada Post for delivery. Accordingly, I find that the hearing notice and evidence was not served by registered mail as permitted under section 88.

However, the Act does permit that the hearing notice can be left with “an agent of the landlord”. The Tenant and his wife have provided affirmed testimony that on or about February 22, 2018, they handed the hearing notice and evidence package to PS, who was identified as being an agent of the Landlord.

Their evidence was that PS was hired to list and sell the rental property on behalf of the Landlord, and the Tenant provided printed search results for Sutton Group-West Coast Realty to confirm PS had a licensed real estate corporation; this individual was clearly authorized by the Landlord to serve notice on the Tenant as well. Section 71 of the Act authorizes me to determine whether a document has been given or served for the purposes of this Act. I am satisfied, on a balance of probabilities, that PS was an agent of the Landlord and that the Landlord had sufficient notice of this hearing.

With respect to the Two-Month Notice to End Tenancy, it would appear that the application is moot as the tenancy was, in fact, ended as of April 30th when the Tenant entered into a new tenancy with the new landlord/developer. Accordingly, there is no need to consider the validity of the Two-Month Notice or the application to cancel that notice.

Although the Tenant successfully negotiated a new tenancy with the new owner within the two-month notice period, he was still obligated to dispute the Notice to End Tenancy within the legislated deadline and incurred a \$100.00 filing fee as a result. I am prepared to award this filing fee to the Tenant. The Tenant is issued a Monetary Order for this amount. Copies of this Order are attached to the Tenant’s copy of this Decision. This Order must be served on the Landlord and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment in accordance with the Tenants’ written instructions.

Conclusion

The Tenant's application is dismissed without leave to re-apply. The Landlord is ordered to pay to the Tenant the sum of \$100.00 for the filing fee.

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: May 7, 2018

Residential Tenancy Branch