



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOLLD BUILDING MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On September 4, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and L.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package in person to the Landlord and L.C. confirmed that this package was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant’s Notice of Hearing package.

The Landlord advised that he served his evidence in early October 2018 by registered mail and the Tenant confirmed receiving this. As per Rule 3.15 of the Rules of Procedure, the Landlord’s evidence was accepted and considered in this hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is

dismissed and the Landlord has issued a notice to end tenancy that complies with the Act.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant and Landlord agreed that the tenancy started on February 1, 2017 and rent was currently established at an amount of \$2,808.00 per month, due on the first day of each month. A security deposit of \$1,350.00 and a pet damage deposit of \$1,350.00 were also paid.

L.C. stated that the Notice was served to the Tenant by posting it on the door on August 17, 2018. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant of the landlord” and the “Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.” The effective end date of the Notice was September 30, 2018. The Tenant advised that she found the Notice on the floor in front of her door, but she was “not 100% sure of the date”.

Analysis

With respect to the Notice served to the Tenant on August 17, 2018, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the

form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The consistent testimony before me is that the Tenant confirmed that the Notice was more likely than not posted to the door. As per Section 90 of the *Act*, the Notice would have been deemed received after three days of being posted to the door. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.”*

After being deemed to receive the Notice, the tenth day fell on Thursday August 30, 2018. However, the undisputed evidence is that the Tenant made her Application on September 4, 2018. Based on this date, the Tenant was late in making this Application and she did not request more time to do so. The Tenant then changed her answer for how she received the Notice and stated that it was by mail, which would have meant that her Application would have been made just in time. However, I was not persuaded by this sudden change in her answer of the reliability of this response. Furthermore, when questioned why she did not dispute the Notice within any of the days leading up to the deadline to dispute, she simply stated that she was unable to. I find it important to note that this information with respect to timeframes for disputing a Notice is provided on the second page of the Notice.

Ultimately, the Notice indicated that it was served on August 17, 2018 and I have affirmed testimony before me from the Landlord corroborating this. In contrast, I have before me the Tenant's uncertainty of when she received this Notice. Furthermore, the testimony of both parties is fairly consistent in that the Notice was more likely than not posted on the door. Based on a balance of probabilities, I am satisfied that the Notice was more likely than not posted on the door on August 17, 2018. As the Tenant did not dispute the Notice within the required time frame, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice and I find that the Landlord is entitled to an Order of Possession. As per the Landlord's request, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice so that the Order of Possession takes effect at **1:00 PM on November 30, 2018**.

As the Tenant was unsuccessful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution in its entirety and I uphold the Notice.

I grant an Order of Possession to the Landlord effective at **1:00 PM on November 30, 2018 after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 22, 2018

Residential Tenancy Branch