



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT

Introduction

On August 14, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking More Time to cancel the Notice pursuant to Section 66 of the *Act*.

The Tenant attended the hearing. The Landlords attended the hearing with N.A., D.P., and M.T. as agents for the Landlords. All in attendance provided a solemn affirmation.

With respect to the Tenant's request for more time to dispute the Notice, the Tenant advised that he made his Application on July 31, 2018. Section 49 of the *Act* states that the Tenant may dispute the Notice by making an Application for Dispute Resolution within 15 days after the date he received the Notice. The undisputed evidence before me is that the Notice was posted on the door on July 13, 2018 and that it was deemed received on July 16, 2018. As such, the last day the Tenant could make the Application was July 31, 2018. When reviewing the notes on file, the Tenant was advised that critical errors were made regarding fee waiver information which required correction; however, the Tenant did not make these corrections until September 26, 2018. As per Rule 2.6 of the Rules of Procedure, the point at which the Application is considered to have been made is "when it has been submitted **and** either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office." As all documents for a fee waiver had not been submitted until September 26, 2018, I am not satisfied that this Application was made within the acceptable requirements of the Rules of Procedure.

Furthermore, the Tenant advised that he served the Landlords the Notice of Hearing package by registered mail on September 26, 2018. However, the Landlords testified that they were never served the Notice of Hearing package and only were informed of the hearing date and time when they contacted the Residential Tenancy Branch on October 23, 2018. The Tenant referenced an Xpresspost tracking number for service of this package (the tracking number is listed on the front page of this decision for ease of reference). When the tracking history was reviewed, it appears as if this package was served to M.T., the purchaser of the property, and M.T. advised that he did receive a package from the Tenant, but the Notice of Hearing was not included. As such, I am not satisfied that the Tenant duly served the Landlords with the Notice of Hearing package as per Rule 3.1 of the Rules of Procedure.

Based on the testimony of the parties, I am satisfied that the Tenant's Application should be dismissed as he did not adequately comply with the Rules of Procedure and dispute the Notice within the required time frame. Therefore, I find that the Tenant is conclusively presumed to have accepted the Notice. Furthermore, I am not satisfied that the Tenant served the Notice of Hearing package to the Landlords. As such, I dismiss the Tenant's Application without leave to re-apply.

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*.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the Notice, state the grounds for ending the tenancy; and be in the approved form.

I find that the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlords on July 13, 2018 complies with the requirements set out in Section 52.

Ultimately, I dismiss the Tenant's Application, I uphold the Notice, and I find that the Landlords are entitled to an Order of Possession that is effective **two days after service of this Order** on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlords effective **two days 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 29, 2018

Residential Tenancy Branch