



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WADHAWAN INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. The tenant appeared at the hearing; however, there was no appearance on part of the landlord.

Since the landlord was not at the hearing, I explored service of hearing documents. The tenant testified that she sent the hearing documents to the landlord at the landlord's service provided that was provided on the 1 Month Notice since the landlord did not provide a service address on the tenancy agreement. The registered mail was sent to the landlord on September 6, 2018 but then redirected to Canada Post's undeliverable mail office after an attempted delivery.

The Act requires the landlord to provide their tenant with a service address on the tenancy agreement and on a Notice to End Tenancy. It would appear the landlord failed to provide it on the tenancy agreement and the landlord may have erred in recording the service address on the 1 Month Notice and Canada Post could not deliver mail to the address the landlord provided to the tenant. However, I am of the view that any error on part of the landlord in recording the service address shall not be consequential to the tenant.

The tenant also submitted that after she learned the registered mail was undeliverable to the service address provided by the landlord, she contacted the landlord by text message on or about October 1, 2018. The landlord responded by text message indicating he had not received the tenant's dispute package but that he had already cancelled the eviction notice.

Section 90 of the Act provides that a party is deemed to have received documents five days after mailing so that a party cannot avoid service. I deem the landlord to have been duly served with the dispute resolution proceeding package via registered mail pursuant to section 90 of the Act since it was the landlord who provided the tenant with an erroneous service address. Also of consideration is that it would appear that deeming the landlord duly served would be non-prejudicial since the landlord appears to have withdrawn the 1 Month Notice. Despite the landlord's text message withdrawal of the 1 Month Notice, the tenant requested greater certainty by way of this decision.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

On August 25, 2018 the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant with a stated effective date of October 1, 2018 and left it on the tenant's door or in the tenant's mailbox. The tenant failed to dispute the 1 Month Notice within the time limit for doing so on August 31, 2018.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

In the absence of the landlord at the hearing or any evidence submitted on behalf of the landlord, I find the landlord has not met his burden to prove the tenancy should end for the reason(s) indicated on the Notice. It would also appear that the landlord does not intend to pursue enforcement of the 1 Month Notice as indicated in his text message to the tenant on or about October 1, 2018. Therefore, I cancel the 1 Month Notice dated August 25, 2018 with the effect that the tenancy continues at this time.

Conclusion

The 1 Month Notice issued on August 25, 2018 is cancelled and the tenancy continues at this time.

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 16, 2018

Residential Tenancy Branch