



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL-4M, RP, PSF, LRE, LAT, RR, OLC, FFT

Introduction

The applicant has requested a correction to a decision of the Residential Tenancy Branch dated January 11, 2019. The original hearing dealt with the tenant's application and amendments pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice"), pursuant to section 49;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Section 78 of *Residential Tenancy Act* enables the Residential Tenancy Branch to correct typographic, grammatical, arithmetic or other similar errors in a decision or order, or deal with an obvious error or inadvertent omission in a decision or order.

In my original decision I recorded the following testimony and made the following finding:

The landlord testified that on October 26, 2018 he put the Four Month Notice in the tenant's mailbox. The Four Month Notice was dated October 26, 2018 and has an effective date of February 28, 2019. The tenant testified that she received the Four Month Notice on October 28, 2018. The tenant testified that she failed to dispute the Four Month Notice on November 28, 2018.

Based on the testimony of both parties and the evidence provided, I find that service of the Four Month Notice was effected on the tenant on October 28, 2018, in accordance with section 88 of the *Act*. Upon review of the Four Month Notice, I find that it conforms to the form and content requirements of section 52 of the *Act*.

Section 49(8)(b) and section 49(9) state that if a tenant who has received a Four Month Notice does not make an application for dispute resolution within 30 days after the date the tenant receives the notice, 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.

In this case, the tenant did not dispute the Four Month Notice within 30 days of receiving it. 30 days from October 28, 2018, when the tenant received the Four Month Notice, was November 27, 2018. The tenant failed to dispute the Four Month Notice one day late. I therefore dismiss the tenant's application to cancel the Four Month Notice.

I find that, pursuant to section 49 of the *Act*, the tenant's failure to file to dispute the Four Month Notice within 30 days of receiving the Four Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this requires the tenant to vacate the premises by February 28, 2019. I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on February 28, 2019. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the subject rental property by 1:00 p.m. on February 28, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

In the Request for Correction, the applicant wrote:

Apparently I testified that I received the notice on Oct 28/2018, however I was just confirming to the Arbitrator that it was in fact in my mailbox and it was dated

October 28, 2018. I am sure I didn't receive it on that day as Oct 28/2018 was a Sunday and I never check the mailbox on weekends....

I ask that the decision is corrected to grant the 3 extra days I should have received according to the RTB rules of delivery.

The original decision is based on the evidence submitted in the application and amendments and the testimony heard at the hearing. In this case, the applicant testified that she received the Four Month Notice on October 28, 2018. I accurately recorded the applicant's testimony in my January 11, 2019 decision. An application for correction is not the appropriate forum in which to have your claim re-heard or to submit evidence that was not included in the original application.

I note that section 90(d) of the *Act* states that a document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], **unless earlier received**, is deemed to be received if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left [emphasis added]. The applicant testified that she received the Four Month Notice on October 28, 2018, earlier than the effective date of the deeming provision in section 90(d) of the *Act*. Therefore, the date of receipt provided by the applicant is the date service is effected, not the three day deeming provision in section 90(d) of the *Act*.

I decline to make any correction and I confirm my original decision.

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: January 18, 2019

Residential Tenancy Branch