



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's legal counsel (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord had an assistant present to assist with submissions.

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

The tenant testified that they sent the Application by e-mail to the landlord last week, on or about March 04, 2019.

The tenant confirmed that they received the signed Two Month Notice on January 21, 2019, which has an effective date of March 31, 2019 and was provided in evidence. In accordance with section 88 of the Act, I find that the tenant was duly served with the Two Month Notice

Analysis

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the Rules) states that the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each

respondent with copies of all of the following: a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution; b) the Respondent Instructions for Dispute Resolution; c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution.

In this type of matter, the tenant must prove they served the landlord with the Application, with all the required inclusions as indicated on the Notice of Hearing document, as per section 89 (1) of the *Act* which permit service by leaving a copy with the landlord or an agent of the landlord or “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 definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

Having reviewed the above, I find that the tenant has not served the Application to the landlord in accordance with the Rules or in accordance with section 89 of the *Act*.

For the above reasons I find that the landlord may be prejudiced by this late service as they did not have a sufficient chance to respond to the Application and to provide their evidence to the tenant in accordance with the Rules.

Therefore, I dismiss the tenant’s application in its entirety, without leave to reapply.

Section 55(1) of the *Act* provides that if a tenant makes an application to set aside a landlord’s notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the Two Month Notice complies with section 52 of the *Act*.

For these reasons, I grant an Order of Possession to the landlord effective on March 31, 2019, the effective date on the Two Month Notice.

Conclusion

The Application is dismissed, without leave to reapply.

I grant an Order of Possession to the landlord effective on **March 31, 2019, after service of this Order** on the tenant. Should the tenant(s) or any occupant 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: March 11, 2019

Residential Tenancy Branch