



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lateral West Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that the Tenants were served with the application for dispute resolution, notice of hearing and its evidence package (the “Materials”) by registered mail on March 11, 2020 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on March 16, 2020. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

The Landlord confirmed at the onset of the hearing that the Landlord was seeking an order of possession based on a notice to end tenancy for cause that was given to the Tenants. It was noted that there was no copy of any notice to end tenancy provided as evidence for the hearing. The Landlord states that this notice was included in its evidence package that was submitted to a Service BC office and uploaded by that office to the Residential Tenancy Branch (the “RTB”) dispute site. The Landlord was informed that this upload could not be accessed by this arbitrator.

Rule 3.10.5 of the RTB Rules of Procedure provides as follows:

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

As the digital evidence cannot be accessed and as the Tenants did not attend the hearing to give agreed evidence on the form and content of the notice to end tenancy, I cannot consider this evidence and find that the Landlord has provided a valid notice to end tenancy as evidence to support its claim for an order of possession. I therefore dismiss this application with leave to reapply.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: April 09, 2020

Residential Tenancy Branch