



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1450 West Georgia Developments LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

In this dispute, the tenants seek to cancel a One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Residential Tenancy Act* (the “Act”). They also sought recovery of the filing fee pursuant to section 72 of the Act.

The tenants applied for dispute resolution on March 3, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 23, 2020. The tenants attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses; the landlord did not attend the hearing.

The tenant (A.H.) testified that he served the Notice of Dispute Resolution Proceeding package (the “Notice”) on the corporate landlord by way of Canada Post regular mail on March 13, 2020. A copy of the receipt was submitted into evidence.

While the tenant believed that he had sent the Notice by registered mail, a review of the receipt indicated that it was instead sent by regular mail. The tenant also testified that he had attempted to deliver the Notice by hand to the landlord’s office but that the office was empty, presumably on account of the pandemic. I do note, however, that the stay-at-home order by the Provincial Health Officer were not yet implemented as of March 13, thus, the landlord’s office should not have been closed on account of the pandemic.

Given the above, while the Notice was not served in accordance with section 89 of the Act, I find that the Notice was sufficiently served for the purposes of the Act pursuant to section 71(2)(c), and that the Notice is deemed to have been received on the fifth day after it was mailed, pursuant to section 90(a) of the Act.

Preliminary Issue: Onus is on Landlord

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In disputes over notices to end a tenancy, the onus is on the landlord to prove, or establish, the ground on which the notice was given.

In this case, the landlord failed to attend the hearing and prove the grounds on which the One Month Notice to End Tenancy for Cause, dated and signed on March 2, 2020, was given. As such, the One Month Notice to End Tenancy for Cause is cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

The tenants' application is granted, and the One Month Notice to End Tenancy for Cause, dated March 2, 2020, is hereby cancelled.

The tenants are entitled to recovery of the filing fee in the amount of \$100.00. I grant the tenants a monetary order in the amount of \$100.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial 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 Act.

Dated: April 23, 2020

Residential Tenancy Branch