



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNC, OLC, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to sections 47, 62 and 72 of the *Residential Tenancy Act*. The tenant for an order to set aside a notice to end tenancy for cause, for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence package by regular mail on October 01, 2020 and stated that he did not file a response to the tenant's evidence because of insufficient time to do so.

The tenant stated that she had served her evidence on the landlord by registered mail on September 02, 2020 but did not file a copy of the tracking slip. In addition, the tenant was unable to provide me with a tracking number. The tenant uploaded her evidence to her electronic file, and I was able to view her evidence. However, I was unable to use her evidence as she had not filed any proof of service on the landlord and the landlord denied having received it in a timely manner.

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* addresses:
Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* addresses:
Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. Based on the testimony of both parties I find that the landlord was not served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

In the absence of evidence to support the notice to end tenancy, I am unable to make a decision to uphold the notice or set the notice aside and therefore I dismiss the tenant's application. The landlord must serve the tenant with another notice to end tenancy if he wants the tenancy to end.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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 05, 2020

Residential Tenancy Branch