



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The named landlord, G.G. attended the hearing via conference call and provided testimony. The named tenants did not attend.

Extensive discussions took place over 61 minutes. The landlord stated that he was not served with the tenants notice of hearing package or any documentary evidence. The landlord clarified that he was advised by one of his other tenants of the dispute and the landlord called the Residential Tenancy Branch office for more details. The landlord stated that he was emailed a copy of the tenant's notice of hearing package in December 2020 by the Residential Tenancy Branch. The landlord further stated that he has initiated two separate applications for dispute with these tenants.

Section 89 of the Act requires the applicant to serve the landlord with the application for dispute in one of the approved manners of service. In this case, the landlord provided undisputed testimony that he was not served.

During the hearing the landlord repeatedly argued that he had submitted a documentary evidence package of 37 pages on December 14, 2020 online. The landlord referred to

an email confirmation of 37 pages submitted on December 14, 2020. However, a review of this package shows a letter dated December 11, 2020 from an individual, G.G. (the same name as the landlord) who stated that he was served with the package via Canada Post. This person stated that he was not the landlord; had no rental property in Kelowna; and did not have a dispute with a tenant. This fact was repeatedly explained to the named landlord on this file. The landlord argued that this was his documentary evidence package submitted to the Residential Tenancy Branch on December 14, 2020 of 37 pages online. The landlord stated that he had submitted videos, photographs and various documents. A comparison of the landlord's claim and that of the received evidence shows that the package received on file was not that of the named landlord. The received package shows the letter dated December 11, 2020 with a copy of the notice of hearing package with screenshots of text messages. A review of all the communications details show that on December 10, 2020 an individual contacted the Residential Tenancy Branch confirming the above issue of a third party (same name as landlord) being served with the hearing package and that the applicant was contacted of this error; the Notice of Hearing package was returned to the Residential Tenancy Branch (see notes on file for more details) at the direction of the Residential Tenancy Branch. A further review shows only 1 entry of documentary evidence submitted at the Residential Tenancy Branch Office in Burnaby on December 14, 2020 as opposed to the landlord's claim that an online submission was made by the landlord on December 14, 2020 of 37 pages. There is no record of an online submission of documentary evidence on December 14, 2020. It was explained to the landlord that despite his claims no documentary evidence was filed online for which the named landlord has referenced. On this basis, there is no evidence before the Arbitrator to make a finding on a 1 month notice.

The tenants' application was dismissed with leave to reapply for lack of service after 61 minutes past the start of the scheduled hearing time. Leave to reapply is not an extension of any applicable limitation period.

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: February 08, 2021

Residential Tenancy Branch