



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HOLLYBURN PROPERTIES
LIMITED and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNR
Landlord: OPC OPR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 27, 2023.

The Landlord was represented by two agents at the hearing and will be collectively referred to as the "Landlord." The Tenant also attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Tenant's application

The Tenant stated he was not sure if he served his Notice of Dispute Resolution Proceeding and evidence to the Landlord. The Landlord denied getting any documents from the Tenant. I am not satisfied the Tenant sufficiently served the required documents, and his evidence, and I hereby dismiss his application, in full, without leave to reapply.

The following Rule highlights what the Tenant was supposed to serve to the Landlord, but didn't:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch or within a different period specified by the director, serve each respondent with copies 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 accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

Landlord's application

The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence packages. No service issues were raised with respect to the Landlord's documents. I am satisfied the Landlord sufficiently served the Tenant with the required documents.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession under the *Act*?

Background, evidence, and analysis

The Landlord testified that he served the Tenant with a One Month Notice to End Tenancy for Cause (the Notice), by posting a copy to the door of the rental unit on January 10, 2023. Proof of service was provided into evidence. The Tenant acknowledged receipt of this Notice but did not recall when. Pursuant to section 88 and 90 of the *Act*, I find the Tenant is deemed to have received this Notice on January 13, 2023, the third day after it was posted to the Tenant's door.

The Notice indicates multiple reasons for ending the tenancy, and includes a "details of cause" section to explain the specifics.

Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by

making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy.

In this case, the Tenant is deemed to have received the Notice on January 13, 2023, and the Tenant had 10 days, until January 23, 2023, to dispute the notice, but did not do so. Accordingly, pursuant to section 47(5) of the Act, I find the Tenant is conclusively presumed to have accepted the end of the tenancy. The Tenant filed an application on January 12, 2023, but failed to serve the required documents to the Landlord, and as stated above, that application was dismissed. In other words, there is no valid application to dispute the Notice, which means the Tenant is conclusively presumed to have accepted the end of the tenancy.

As such, I find the Landlord is entitled to an order of possession, which will be effective 2 days after it is served on the Tenant.

As the Landlord's application was successful, and pursuant to section 72 of the Act I grant the Landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. I **authorize** the landlord to retain \$100.00 from the Tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 28, 2023

Residential Tenancy Branch