



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 523498 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated November 16, 2015.

The tenant and two agents for the landlord (the “agents”) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

During the hearing the agents stated that they served the landlord’s documentary evidence late due to both agents being away in California together for “most of December”. I find that this reason does not constitute a reasonable reason for the landlord to file their evidence late and is not in accordance with Rule 2.5 and 3.14 of the Rules of Procedure. Therefore, I have excluded all of the landlord’s documentary evidence as it was filed late and contrary to the Rules of Procedure as described above.

Issues to be Decided

- Should the 1 Month Notice dated November 16, 2015 be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenant testified under oath that she vehemently disputes the 1 Month Notice and the cause listed on the 1 Month Notice which is “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice in accordance with the Rules of Procedure. An allegation without supporting

evidence to support that allegation, such as witness testimony or a statement from a witness, documents supporting that written notice was provided and served upon the tenant, a copy of the tenancy agreement, and evidence that a reasonable time was provided to correct any alleged breach of a material term is not sufficient evidence to prove a 1 Month Notice in the matter before me.

When a tenant disputes a Notice to End Tenancy, it is the responsibility of the landlord to ensure that all evidence intended to be relied upon at a dispute resolution hearing is served on both the respondent and the Residential Tenancy Branch, especially if both agents plan to be away on holidays outside of the country at the same time after serving a tenant with a 1 Month Notice and the tenant is disputing the 1 Month Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find the landlord has provided insufficient evidence to prove that the 1 Month Notice dated November 16, 2015 is valid. Therefore, **I cancel** the 1 Month Notice dated November 16, 2015 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application was successful, **I grant** the tenant the recovery of the cost of the filing fee in the amount of **\$50.00**. **I authorize** the tenant to deduct \$50.00 on a one-time basis from the monthly rent for a future month in full satisfaction of the recovery of the \$50.00 filing fee.

Conclusion

The 1 Month Notice issued by the landlord dated November 16, 2015 is cancelled.
The tenancy has been ordered to continue until ended in accordance with the *Act*.

The tenant is authorized to deduct \$50.00 on a one-time basis from the monthly rent for a future month in full satisfaction of the recovery of the cost of the \$50.00 filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 20, 2016

Residential Tenancy Branch

