



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, CNC, OPC, MNR, OLC, LAT, FF

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent, to set aside a Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for authority to change the locks to the rental unit. At the hearing the Tenant stated that he vacated the rental unit on November 17, 2015 and he no longer wishes to pursue his Application for Dispute Resolution.

The Tenant stated that on October 08, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Tenant submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were served to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, an Order of Possession for Cause, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on November 10, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were slid under the door of the rental unit.

The Owner of the Residential Complex stated that on November 10, 2015 he witnessed the Landlord place the aforementioned documents under the door of the rental unit.

The Tenant stated that he did not receive the documents that were allegedly slid under the door of his rental unit.

On October 27, 2015 the Tenant submitted an amended Application for Dispute Resolution and five additional pages of evidence to the Residential Tenancy Branch. He stated that these documents were served to the Landlord, via registered mail, on October 08, 2015. The Landlord acknowledged receipt of these documents.

On November 03, 2015 the Tenant submitted nine pages of evidence to the Residential Tenancy Branch. On November 17, 2015 the Tenant submitted 11 pages of evidence to the Residential Tenancy Branch. On November 20, 2015 the Tenant submitted seven pages of evidence to the Residential Tenancy Branch. He stated that he believes all of these documents were served to the Landlord, via registered mail, on November 26, 2015. The Landlord acknowledged receipt of these documents.

Preliminary Matter #1

When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord's evidence is that the Application for Dispute Resolution was served by sliding it under the door of the rental unit. This is not a method of service that is authorized by section 89 of the *Act*. As the Landlord has not established that the Tenant was properly served with the Application for Dispute Resolution I am unable to proceed with the Landlord's Application, as I am not satisfied the Tenant received the Application. I therefore dismiss the Landlord's Application for Dispute Resolution with leave to reapply for a monetary Order.

In determining that the Landlord's Application for Dispute Resolution should be dismissed I was heavily influenced by the Tenant's testimony that he did not receive the Landlord's Application for Dispute Resolution and by the absence of evidence to refute that testimony. As I am unable to conclude that the Tenant received the Application for Dispute Resolution, I am unable to conclude that he was sufficiently served with the Application for Dispute Resolution pursuant to section 71(2) of the *Act*.

Preliminary Matter #2

The Tenant argued that I do not have jurisdiction over this living arrangement, in part, because he shared the bathroom with the owner of the residential complex.

The Landlord and the Tenant agree that the Tenant has his own cooking facilities but that he shares the bathroom facilities with other occupants of the residential complex.

The Owner of the Residential Complex stated that:

- he has a business office in the residential complex, which has bathroom facilities;
- he has a room in the residential complex where he occasionally sleeps;
- he only sleeps in this room one or two nights per month;
- he has a permanent residence in a different location;
- he typically uses the bathroom facilities in his office; and
- he occasionally uses the communal bathroom facilities when it is more convenient.

The Tenant stated that the Owner of the Residential Complex is at the residential complex on most days, with the exception of weekends, and that he believes the Owner frequently stays overnight.

Section 4(c) of the *Act* stipulates that the *Act* does not apply to living accommodation in which a tenant shares bathroom or kitchen facilities with the owner of that accommodation. I find that section 4(c) of the *Act* does not apply to this tenancy and that I do have jurisdiction over the tenancy.

In reaching this conclusion I was heavily influenced by the undisputed evidence that the Landlord has private bathroom facilities in the residential complex, which the Tenant does not have the right to use. In my view the spirit of the legislation does not intend to decline jurisdiction over living accommodations where the owner of the rental unit occasionally uses communal washroom facilities used by a tenant, particularly when the owner has an alternate option.

The Tenant argued that I do not have jurisdiction over this living arrangement, in part, because the "Resident Contract" the parties signed declares that "the Residential Tenancy Act does not apply as outlined in Section 4 of the Act". The contract, which was submitted in evidence by the Tenant, includes many of the terms of a tenancy agreement including the start date of the tenancy, the amount of rent, and the date rent is due.

The Landlord and the Tenant agree that the Tenant agreed to pay monthly rent of \$500.00 for the right to occupy this rental unit. Section 1 of the *Act* defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant

respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that the Landlord and the Tenant entered into a tenancy agreement as that is defined by the *Act*.

Section 5 of the *Act* stipulates that landlords and tenants may not avoid or contract out of the *Act* and that any attempt to avoid or contract out of this *Act* is of no effect. Pursuant to section 5 of the *Act*, I find that the term in the "Resident Contract" which declares that the *Act* does not apply has no force or effect. I therefore find that I have jurisdiction over this living arrangement.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that the Tenant has not paid rent for October of 2015.

The Landlord stated that on October 23, 2015 she placed a Ten Day Notice to End Tenancy, which had a declared effective date of November 01, 2015, under the door of the rental unit. The Tenant stated that he located this Notice to End Tenancy on, or about, November 27, 2015. The Landlord stated that she was not aware the Tenant had vacated the rental unit and that the Landlord wishes to pursue the Landlord's claim for an Order of Possession and a monetary Order.

Analysis

On the basis of the undisputed evidence, I find that the Tenant did not pay rent for October of 2015 and that the Landlord therefore had the right to serve a Ten Day Notice to End Tenancy for Unpaid Rent.

As the Tenant acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent that the Landlord placed under the door of his rental unit, I find that the Notice was sufficiently served to the Tenant on, or about, October 27, 2015 in accordance with section 71(2)(b) of the *Act*.

As the Tenant declared that he no longer wishes to pursue his Application for Dispute Resolution, I dismiss his claim to set aside the Ten Day Notice to End Tenancy for Unpaid Rent that he received on October 27, 2015.

Section 50(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession and the director dismisses the tenant's application or upholds the landlord's notice.

As the Landlord clearly indicated at the hearing that the Landlord is seeking an Order of Possession and I dismissed the Tenant's application to set aside the Ten Day Notice to End

Tenancy for Unpaid Rent, I grant the Landlord an Order of Possession in accordance with section 50(1) of the *Act*.

As the Landlord is being granted an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, I find it is not necessary to consider whether she is entitled to an Order of Possession on the basis of a One Month Notice to End Tenancy for Cause.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord's Application for Dispute Resolution is dismissed with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for unpaid rent.

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: December 03, 2015

Residential Tenancy Branch

