



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for Cause pursuant to section 55; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing although the teleconference line remained open until 9:43 am to allow the tenant an opportunity to attend the teleconference scheduled for 9:30 am. The landlord attended in support of his application to end this tenancy. He submitted documentary evidence prior to the hearing and testified at the hearing with respect to service of documents for this hearing and the difficulties he alleges have been caused by the tenant.

Preliminary Issue: Sufficiency of Applicant's Evidence

The landlord submitted an evidence package with the following documents;

- A copy of his Notice of Hearing from the Residential Tenancy Branch;
- A copy of his Application for Dispute Resolution;
- A copy of a 1 Month Notice to End Tenancy for Cause dated September 1, 2015;
- A copy of a letter to the tenant with suggestions to resolve the tenancy related issues;
- A copy of text messages from the landlord's son to the landlord;
- Three photographs;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated September 10, 2015;
- A copy of the Residential Tenancy Branch's information sheet titled, "Landlord and Tenant Fact Sheet".

The landlord testified that he agreed with the tenant to continue the tenancy after issuing the above mentioned notices (both 1 Month and 10 Day from September 2015).

The landlord testified that he has now applied on the basis of a new 1 Month Notice to End Tenancy that he issued to the tenant in March 2016 however the landlord did not submit a copy of this notice as evidence for this hearing.

This is the landlord's application to end a tenancy and therefore he bears the burden of proof to justify the end of the tenancy. The Landlord Tenant Fact Sheet submitted into evidence by the landlord states,

The applicant is responsible for serving to each respondent...evidence submitted with the application. This might include ...a copy of a tenancy agreement, a copy of the Notice to End Tenancy... (page 1)

The Rules of Procedure allow an arbitrator to refuse to consider evidence if you did not serve and submit it as soon as possible... (page 3)

The Residential Tenancy Branch Rules of Procedure provide substantial information regarding the dispute resolution process and the rules of evidence within the dispute resolution process.

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application...

The landlord must meet the standard of proof in his own application for a Notice to End Tenancy for Cause. Section 47 and section 52 provide the requirements that a landlord must meet in seeking to end a tenancy for cause and therefore, the factors that an

arbitrator must consider in granting an end to a tenancy for cause. My analysis of a 1 Month Notice to End Tenancy requires that I evaluate the notice itself.

The landlord insisted that the new 1 Month Notice had been issued and served in accordance with the Act. However, I cannot make any evaluation of the landlord's claim when he has not submitted the 1 Month Notice as evidence for the hearing of his application. Therefore, I dismiss the landlord's application with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply.

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: June 07, 2016

Residential Tenancy Branch