



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC FF O

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated September 10, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlord comply with the *Act*, regulations or a tenancy agreement;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants were represented at the hearing by the Tenant H.F. The Landlord attended the hearing on her own behalf and was accompanied by J.Z., who provided translation services. Both parties provided a solemn affirmation.

At the outset of the hearing, H.F. testified that the Tenants' Application package, including the Notice of a Dispute Resolution Hearing and the evidence upon which she intended to rely, was served on the Landlord by regular mail on October 25, 2016.

Residential Tenancy Branch Rule of Procedure 3.1 states:

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, served each respondent with copies of all of the following:

- a) *The Application for Dispute Resolution;*
- b) *The notice of a dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;*
- c) *The dispute resolution proceeding information package 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...*

Further, Rule of Procedure 3.14 states:

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch...not less than 14 days before the hearing.

As the Tenants had not complied with the Rules of Procedure referenced above, the parties were advised that the Tenants' Application would be dismissed. At that point in the hearing, the Tenant advised that the documents required to be served under Rule of Procedure 3.1 were served on September 17, 2016, which would have been in compliance with Rule of Procedure 3.1. However, in light of the inconsistent testimony, the late service of evidence contrary to Rule of Procedure 3.14, and lack of documentary evidence of service, I order that the Tenants' Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord if the notice complies with section 52 of the *Act*. Although the Landlord did not submit any documentary evidence in response to the Tenants' Application, I have considered the 10 Day Notice submitted with the Tenants' documentary evidence. I find the 10 Day Notice complies with section 52 of the *Act*, and that the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

The Landlord remains at liberty to apply for monetary relief for unpaid rent at a future date in accordance with the *Act*.

Conclusion

The Tenants' Application is dismissed.

By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: November 4, 2016

Residential Tenancy Branch

