



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to section 49 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) issued on March 31, 2018.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issues- Service of Documents

The tenant testified that he received a handwritten 2 Month Notice placed under his door by the landlord on March 31, 2018. The landlord testified that he handed this March 31, 2018 2 Month Notice to the tenant on that date. Based on the sworn testimony of the parties, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*.

The landlord confirmed that the tenant handed him a copy of the Notice of Hearing on May 3 or 4, 2018. The landlord said that he had not received any written evidence from the tenant, nor had he submitted any written evidence to the tenant. The tenant said that he was not informed by Service BC or the Residential Tenancy Branch (RTB) that he was required to provide copies of his written evidence or a copy of his application for dispute resolution to the landlord. Although the landlord confirmed that he had copies of the original Residential Tenancy Agreement for this tenancy and the handwritten notice to end tenancy that he provided to the tenant, he gave undisputed sworn testimony that he had never received a copy of the tenant's application for dispute resolution.

The landlord testified that he had subsequently handed the tenant a second 2 Month Notice to End Tenancy on the official RTB forms the day after the tenant handed him

the Notice of Hearing. The tenant confirmed that the landlord handed him the second 2 Month Notice on the RTB forms.

The tenant maintained that the landlord could not issue him a new 2 Month Notice while the tenant's original application to cancel the handwritten one issued on March 31, 2018 had not yet been heard by an arbitrator appointed pursuant to the *Act*.

Under these circumstances, I find that the tenant has not complied with the requirements of section 89(1) of the *Act*, which requires that an applicant for dispute resolution provides the respondent with a copy of the application for dispute resolution. Section 89(1) reads in part as follows:

Special rules for certain documents

89 (1) *An application for dispute resolution..., when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;...*

Separate from the requirements of section 89(1) of the *Act*, the principles of natural justice ensure that a respondent in any type of statutory proceedings is to be provided with sufficient information to know the case against them so that they have a proper opportunity to respond to the case against them. While the landlord in this case was given the Notice of Hearing by the tenant, the tenant's failure to provide the landlord with a copy of the tenant's application for dispute resolution had the effect of preventing the landlord from knowing the actual case against the landlord and the information upon which the tenant intended to rely upon at the hearing.

The basic material included in the Notice of Hearing provided to the applicant, in the application for dispute resolution and available at the websites cited in the Notice of Hearing alerted the applicant to the requirement that the applicant provide the respondent with a copy of the application for dispute resolution. I reject the tenant's claim that it was the responsibility of Service BC or the RTB to specifically notify the

tenant that the application could not be heard unless the tenant served the landlord with a copy of the application for dispute resolution, which, in this case, was the primary evidence that the tenant submitted, beyond the landlord's own documents.

At the hearing, the landlord confirmed that he realized now that a handwritten notice to end tenancy does not comply with the requirements of the *Act* {section 52(e)} and that he could not pursue an end to this tenancy on the basis of the March 31, 2018 handwritten notice which was not on the proper Residential Tenancy Branch form.

I discussed with the parties the possibility of reaching a settlement of the issues surrounding that notice as the landlord agreed that he had no opportunity to pursue an end to this tenancy on the basis of the March 31, 2018 notice. The tenant expressed reluctance to reach any form of settlement of the application before me without a full hearing of the issues. As noted above, the tenant's failure to provide the landlord with a copy of the tenant's application for dispute resolution prevented me from conducting a full hearing of the tenant's application to cancel the March 31, 2018 notice, the only issue before me.

For these reasons, I advised the parties that I had no option but to dismiss the tenant's existing application with leave to reapply. In so doing, I note that I am only able to grant leave to reapply to the tenant's application to cancel the March 31, 2018 notice, a notice which the landlord now realizes he cannot use in attempting to end this tenancy.

Conclusion

The tenant's application to cancel the March 31, 2018 notice from the landlord is dismissed 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 08, 2018

Residential Tenancy Branch