



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenant testified that she personally served the landlord with the Notice of Dispute Resolution Proceeding for this hearing on June 7, 2018, which was confirmed by the landlord. Therefore, I find that the landlord was served with the tenant's application in accordance with section 89 of the *Act*.

Preliminary Issue – Service of Landlord's Evidence on the Tenant

The landlord, as the respondent in this matter, testified that he served the tenant via email with his evidence on July 20, 2018, which was six days before this hearing scheduled on July 27, 2018. The tenant testified that she does not check her email very often and that she did not receive the landlord's evidence.

Rules 3.15 and 3.16 of the Residential Tenancy Branch Rules of Procedure set out the requirements for a respondent serving their evidence on the applicant, as noted below, in part:

Rule 3.15 Respondent's evidence provided in single package

...

*The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch **not less than seven days before the hearing.***

3.16 Respondent's proof of service

*At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence **as required by the Act and these Rules of Procedure.***

[My emphasis added]

The Act requires that documents may be served using the following methods as explained in section 88:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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;
 - (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
 - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
 - (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
 - (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
 - (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
 - (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
 - (j) by any other means of service prescribed in the regulations.

As noted above, email is not listed as an acceptable method of service of documents, such as evidence. Further to this, the landlord failed to serve his evidence on the tenant or upload it to the Residential Tenancy Branch at least **seven days** in advance of the hearing.

Therefore, I find that the landlord's evidence was not served in accordance with the *Act* or the Rules of Procedure. As such, the landlord's evidence was not considered in this matter.

Preliminary Issue – Amendment to the Tenant's Application for Dispute Resolution

At the outset of the hearing, the both parties confirmed that the tenant's rental unit is located in the upper unit of the dispute address, although the tenant's application only provided the street address of the rental property without differentiation of a unit number. The landlord confirmed the unit number for the tenant's rental unit. With the agreement of both parties, and pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to add the unit number to the dispute address.

Preliminary Issue – Procedural Matter

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. This tenancy will end at 1:00 p.m. on September 1, 2018, by which time the tenant and any other occupants will have vacated the rental unit.
2. By 5:00 p.m. on August 2, 2018, the tenant will pay the landlord a total amount of \$1,300.00 in full satisfaction of the rent owed for the months of July and August 2018.
3. The landlord will provide the tenant with receipts for all rent payments made and note the receipts with the condition that the payments are “for use and occupancy only”.
4. By 5:00 p.m. on August 2, 2018, the tenant will dispose of all garbage and other items currently stored on the patio and roof area adjacent to her rental unit.
5. This tenancy ends by way of this settlement and the parties agree that: the landlord’s 10 Day Notice dated June 2, 2018 is cancelled and of no further force or effect, and the tenant’s application for dispute resolution in its entirety is cancelled.
6. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenant’s application, and the landlord’s notice to end tenancy dated June 2, 2018, and all issues currently under dispute at this time, and that they agreed free of any duress or coercion.
7. The landlord reserves the right to pursue the tenant for payment of rental arrears pertaining to prior months not addressed in this settlement agreement.

The parties are still bound by all of the rights, responsibilities, terms and conditions of the tenancy agreement, the Act, and the associated regulations.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue to the landlord the attached Order of Possession to be served on the tenant by the landlord **only** if the tenant fails to vacate the rental unit **by 1:00 p.m. on September 1, 2018 or abide by any other term of this settlement agreement**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Further to this, I issue to the landlord the attached Monetary Order in the amount of \$1,300.00 to be served on the tenant by the landlord **only** if the tenant fails to pay the **landlord \$1,300.00 by 5:00 pm on August 2, 2018 as per the terms of this settlement**. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that

Court. If the tenant only makes a partial payment and not the total amount, this partial payment must be accounted for if the landlord is enforcing the Monetary Order.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated June 2, 2018, is cancelled and is of no force or effect.

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: July 27, 2018

Residential Tenancy Branch