



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 14 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. The landlord called in late at 9:32 a.m., claiming she could not find her paperwork. The hearing ended at 9:44 a.m.

The landlord confirmed that she served each of the two tenants personally with a copy of her application for dispute resolution hearing package on September 15, 2018. In accordance with section 89 of the *Act*, I find that both tenants were personally served with the landlord's application on September 15, 2018.

At the outset of the hearing, the landlord confirmed that she was not seeking an order of possession because she said the tenants were vacating the rental unit on October 31, 2018. She said that she would wait to see if they moved out. I notified her that if she wanted to reapply for the order of possession for cause based on her 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), she could do so, but she would have to file a new application and pay a new filing fee, as she was not getting the filing fee back for this current application. She confirmed her understanding of same.

The landlord asked what would happen if she wanted to go ahead with the hearing on the current date. I notified her that I could not go ahead because she did not submit a legible and readable copy of both pages of the 1 Month Notice, as required. She did not submit page 2 of the notice which indicates the reasons why she issued the notice. She submitted an illegible copy of page 1 of the notice, which was a photograph that she took, so I could not read anything on it. The tenants did not appear at this hearing to confirm any details on the notice.

Pursuant to section 55 of the *Act*, I can only issue an order of possession to the landlord if the 1 Month Notice meets the requirements of section 52 of the *Act*. If I do not have a complete copy of the notice or I cannot read it, I cannot determine whether it meets the requirements of section 52 of the *Act*.

The landlord claimed that no one told her she had to submit an original of the notice or a clear copy. I notified her that she did not have to submit an original of the notice, but she had to submit both pages and it had to be legible. The landlord became upset by my comments and would not allow me to speak, as she continued to speak at the same time as me.

For the landlord's information, Residential Tenancy Policy Guideline 42 states the following (my emphasis added):

E. DIGITAL COPIES OF WRITTEN DOCUMENTS

Written documents being used as evidence should be submitted as a digital copy, when possible. Parties may opt to convert the format of their written documents by scanning or taking photographs of the document. In the absence of a scanner, parties may consider using a scanner application to aid in digitizing their documents. Scanner applications are typically used on mobile phones or tablets and help improve the image quality of documents being scanned with the device's camera.

When converting documents to a digital format, it is critical to maintain the image quality and integrity of the document to make sure that it is clear and understandable. If the evidence is unintelligible or unclear, an arbitrator may require the party who submitted the document to re-submit it or the evidence may not be considered.

Rules 2.5 and 3.7 of the Residential Tenancy Branch *Rules of Procedure* indicate the following, in part (my emphasis added):

2.5 Documents that must be submitted with an Application for Dispute Resolution
To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

...

• 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

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

...

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Accordingly, the landlord's application to recover the \$100.00 filing is dismissed without leave to reapply.

The remainder of the landlord's application 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: October 22, 2018

Residential Tenancy Branch