



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, OLC, OT (Tenants' Application)
OPR, MNRL, MNDL, MNDCL, FFL (Landlord's Application)

Introduction

This hearing convened as a result of cross applications.

In the Tenants' Application for Dispute Resolution, filed on July 13, 2018, the Tenants requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 7, 2018 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulation* or the tenancy agreement, other unspecified relief, and to recover the filing fee.

In the Landlord's Application for Dispute Resolution, filed on July 17, 2018, the Landlord requested an Order of Possession, monetary compensation from the Tenants and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on September 7, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Service of the Tenants' Application Materials

The Landlord claimed that she did not receive the Tenants' Application materials. She stated that she was only informed they had made an Application to dispute the Notice when she applied for an Order of Possession by way of Direct Request Proceeding pursuant to section 55(4) of the *Act*. The Landlord stated that she did not receive any package from the Tenants, nor did she receive any notification from the post office as to such a package and therefore did not have their Application or any of their evidence.

The Tenant, J.G., testified as follows. She testified that she served the Landlord with her application materials by registered mail. She was not able to provide evidence as to the date the package was sent or the tracking number.

When I informed the Tenants that I could not consider their Application as it had not been properly served on the Landlord, the Tenant, J.G., responded as if she expected such a result, and asked that they be permitted to respond to the Landlord's claims.

I accept the Landlord's evidence that she was not served with the Tenants' Application.

I find that the Tenants failed to serve the Landlord with their Application filed on July 13, 2018 such that their Application was not properly made in accordance with the *Act* and the *Rules of Procedure*. I therefore dismiss the Tenants' claim in its entirety.

Preliminary Matter—Tenants' Evidence submitted September 4, 2018

In response to the Landlord's claim, the Tenants submitted 65 pages of evidence on September 4, 2018, three days prior to the hearing.

Rules of procedure in courts and administrative tribunals relating to the timely exchange of evidence are designed to prevent what is commonly called "trial by ambush": a situation where one party is not afforded a reasonable opportunity to respond to the other's evidence. To ensure fairness decision makers may exclude evidence which is delivered outside the applicable rules or adjourn a hearing to provide the non-offending party the opportunity to respond.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*; the following *Rules* apply to the service of evidence in such proceedings:

1.1 Objective

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

3.1 Documents that must be served

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

- a) the application for dispute resolution;
- b) the notice of 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;
- d) a detailed calculation of any monetary claim being made;
- e) 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
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

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.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

3.15 Respondent's evidence

To ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible.

The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

In the event that evidence is not available when the respondent submits and serves their evidence, the Arbitrator will apply Rule 3.17 [*Consideration of new and relevant evidence*].

See also Rules 3.7 [*Evidence must be organized, clear and legible*] and 3.10 [*Digital evidence*]

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.

3.17 Consideration of new and relevant evidence.

Evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the Arbitrator that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

The Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the Arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The Arbitrator must apply Rule 6.3 [*Whether to adjourn the dispute*]

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;

- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find the Tenants failed to serve their response evidence on the Landlord in accordance with the *Rules of Procedure*. To consider the Tenants' evidence would be prejudicial to the Landlords and would deny her a fair opportunity to respond to this evidence. The Tenants only submission as to the reason for the late delivery of this evidence was to note that "there was a long weekend"; however, as documents can be submitted online, such holidays are of little if any consequence. Further the Tenants failed to make any submissions as to whether their late evidence could properly be construed as "new and relevant" as provided for in *Rule 3.17*.

Hearings at the Branch are scheduled on a priority basis. Hearings which involve urgent matters such as emergency repairs and the validity of a notice to end tenancy are scheduled sooner than monetary claims. The hearing before me dealt with the Tenants' request to cancel a notice to end tenancy and as such was scheduled as a priority. As the continuation of the tenancy is at issue, there is significant prejudice to the parties should I adjourn the matter. For reasons which will be more clear in this my Decision, I also find that an adjournment will not aid in the resolution of this matter.

I therefore exercise my discretion and decline to consider the Tenants' evidence submitted on September 4, 2018.

No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim before me is the validity of the Notice. As the Notice relates to a claim of unpaid rent and utilities, I find the Landlord's claim for monetary compensation for unpaid rent and utilities is relevant. The Landlord's claims for compensation for the strata fines and damage to the rental unit are unrelated to the Notice and are therefore dismissed with leave to reapply.

Preliminary Matter—Delivery of Decision and Orders by Email

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to both parties and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent and utilities?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began February 1, 2018. Monthly rent is payable in the amount of \$900.00. Although the Tenants were required to pay a security deposit and pet damage deposit totalling \$900.00 the Tenants failed to pay.

The Landlord testified that the Tenants did not pay rent for June 2018, nor did they pay for July 2018. The Landlord also noted that the Tenants failed to pay utilities in the amount \$373.74. The Landlord then posted the Notice to the door on July 7, 2018 indicating the amounts due.

On July 17, 2018 the Landlord applied for an Order of Possession and Monetary Order based on the Notice. At that time she was informed the Tenants had applied to dispute the Notice.

The Landlord confirmed that the Tenants failed to pay rent for June, July, August and September such that the sum of \$3,600.00 was outstanding for rent.

The Landlord also confirmed that the Tenants failed to pay their electrical utility as follows:

April 3, 2018	\$167.09
May 30, 2018	\$206.65
July 31, 2018	\$115.13
TOTAL UTILITIES	\$488.87

The Tenant, J.G., testified in response to the Landlord's claim. She confirmed that they did not pay their rent for June, July, August and September 2018.

J.G. also confirmed that they failed to pay the electrical utility in the amount of \$488.87.

J.G. stated that the reason they did not pay rent was that the Landlord would not accept their rent. J.G. stated that on June 10, 2018 she tried to pay the Landlord \$500.00 by electronic transfer and the balance by cash. The Tenant stated that the Landlord would not come to the house and would not meet up with her to accept the cash. She claimed that she lost her bank card after this time.

The Tenant further stated that she tried to pay the Landlord her July rent "by sending the Landlord text messages". She stated that she did not send a \$900.00 electronic transfer to the Landlord because her account "got frozen" because she cashed one of the other Tenant's, M.F.'s cheque and her account went to the fraud department.

The Tenant then stated that she "tried to pay the \$900.00 July rent on July 3, 2018 by cash I guess". The Tenant further stated that the Landlord was supposed to come by for an inspection on that date but never showed up.

The Tenant further stated that they were willing to go anywhere, at any time to pay rent and the Landlord simply refused to accept payment.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

I accept the Landlord's evidence that the Tenants were required to pay monthly rent of \$900.00. I also accept her evidence that the Tenants failed to pay rent for June, July, August and September 2018 such that \$3,600.00 is owed for rent.

I also accept the Landlord's evidence that the Tenants failed to pay the electrical utility account in the amount of \$488.87.

The Tenants were served the Notice by posting to the rental unit door on July 7, 2018. As documents served in this manner are deemed served three days later, I find they were served as of July 10, 2018. As such, the corrected effective date of the Notice is July 20, 2018.

The Tenants applied for Dispute Resolution but failed to serve their Application on the Landlord such that I dismissed their Application.

Section 55 of the *Act* reads in part as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice and find that it complies with section 52 of the *Act* in terms of form and content; as such, and pursuant to section 55 of the *Act* the Landlord is entitled to an Order of Possession. As the effective date of the Notice has passed, the Order of Possession will be effective two days after service on the Tenants. Should the Tenants fail to move as Ordered the Order of Possession may be served on the Tenants and filed and enforce in the B.C. Supreme Court.

Section 26 of the *Act* provides in part as follows:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

It is not the Landlord's responsibility to collect rent from the Tenants; it is the Tenants' responsibility to pay rent. I do not accept the testimony of the Tenant J.G. that the Landlord refused rent payments. When asked why they did not simply send electronic transfers, J.G. stated that her bank card was lost. A bank card is not required for electronic transfers.

The Tenant then stated that her account was frozen at some point in time. These explanations, if believed, would only account for two rent payments. I find it more likely that the Tenants simply did not intend to pay rent.

There was no dispute the Tenants failed to pay rent as required and failed to pay the electrical utility; J.G. conceded this in her testimony. I therefore find the Landlord is entitled to a Monetary Order for unpaid rent and utilities. As the Landlord has been substantially successful, she is also entitled to recover her filing fee.

Conclusion

The Tenants' Application is dismissed as the Tenants failed to serve their Application on the Landlord.

The Landlord is granted an Order of Possession effective two days after service.

The Landlord is granted a Monetary Order in the amount of **\$4,188.87** for unpaid rent in the amount of \$3,600.00, unpaid utilities in the amount of \$488.87, and recovery of \$100.00 filing fee. This Monetary Order may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

The Landlords' Application for monetary compensation for strata fees and replacement of the refrigerator 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: September 07, 2018

Residential Tenancy Branch