



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPRM-DR (Landlord)
CNR, FFT, MT, RP, RR (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application August 07, 2019 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 03, 2019 (the “Notice”);
- For more time to file the dispute;
- For repairs to be made to the unit or property;
- To reduce rent for repairs, services or facilities agreed upon but not provided; and
- Reimbursement for the filing fee.

The Landlord filed their application August 12, 2019 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on the Notice, to recover unpaid rent and for reimbursement for the filing fee.

The Agents for the Landlord appeared at the hearing. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

L.S. testified that the Landlord received the hearing package for the Tenants' Application September 24, 2019. L.S. took issue with the timing of service and said the Agents were not agreeable to proceeding on the Tenants' Application in the circumstances. L.S. testified that the Landlord never received the Tenants' evidence.

Tenant J.L. confirmed the hearing package was served on the Landlord September 24, 2019. I asked the Tenants why the hearing package was served so late. Tenant J.L. said this was because the parties were trying to resolve the issues. He said the Tenants were not satisfied with the Landlord's response to the issues raised so they decided to "put through" the dispute. He also mentioned that the Tenants did not have the time or energy to deal with it because they were looking for a new place.

RTB records show the hearing package was emailed to the Tenants August 20, 2019 advising to serve by August 23, 2019.

Section 59(3) of the *Residential Tenancy Act* (the "Act") requires an applicant to serve the respondent with a copy of their application for dispute resolution "within three days of making it".

Rule 3.1 of the Rules of Procedure (the "Rules") states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet...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...

Rule 3.14 of the Rules states that an applicant must serve their evidence on the respondent not less than 14 days before the hearing.

Here, the parties agreed the hearing package was served on the Landlord September 24, 2019. The Tenants were required to serve the hearing package by August 23, 2019. The Tenants served the hearing package one month late. The Landlord only received the hearing package 12 days before the hearing. The Tenants did not comply with section 59(3) of the *Act* or rule 3.1 of the Rules.

I do not find the reasons for the late service sufficient to justify the non-compliance with the *Act* and Rules. There is no reason the Tenants could not have served the hearing package and their evidence on the Landlord within the required timelines and then continued to have discussions with the Landlord to try to resolve the issues. Nor is it sufficient to state that the Tenants did not have the time or energy to do so.

I accept that the Landlord was not able to fully prepare to deal with the issues raised in the Tenants' Application given the late service of the hearing package. I find 12 days before the hearing to be a short period of time. I note that this does not even comply with the rules relating to service of evidence on the Landlord.

In the circumstances, I determined the Landlord was not served in accordance with the *Act* or Rules and therefore dismissed the Tenants' Application.

The parties agreed the Tenants vacated the rental unit around September 01, 2019 and returned the keys to the Landlord September 04, 2019.

Therefore, the following issues raised in the Tenants' Application are no longer an issue and are dismissed **without** leave to re-apply:

- The dispute of the Notice;
- The application for more time to file the dispute; and
- The request for an order that repairs be made to the unit or property.

Given the service issue, the request to reduce past rent for repairs, services or facilities agreed upon but not provided is dismissed **with** leave to re-apply. This does not extend any time limits under the *Act*.

I decline to award the Tenants reimbursement for the filing fee given their application has been dismissed. This request is dismissed **without** leave to re-apply.

Tenant J.L. confirmed receipt of the hearing package and evidence for the Landlord's Application and raised no issues in this regard.

Given the Tenants had vacated, the Agents withdrew the request for an Order of Possession based on the Notice. L.S. advised that the Tenants had paid the outstanding rent and therefore the Landlord also withdrew the request to recover unpaid rent. L.S. advised that the Landlord still sought reimbursement for the filing fee.

The parties were given an opportunity to present relevant evidence and make relevant submissions about the Landlord's request for reimbursement for the filing fee. I have considered the admissible documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It shows rent is due on or before the first day of each month.

L.S. testified as follows. Rent is payable on the first day of each month. The Tenants did not pay rent as required. The Tenants were served with the Notice. The Landlord did not receive rent until August 20th. The Landlord's Application was filed August 12th.

J.R. testified as follows. The Tenants did not pay rent and were served with the Notice. Tenant J.L. came to him on August 12th asking for more time to pay rent. He told Tenant J.L. no. Tenant J.L. said he would pay rent in a couple days. Tenant J.L. brought a cheque for rent August 14th. He told Tenant T.L. he had to pay by money order. The Landlord received the money order August 20th.

Tenant T.L. testified as follows. He believes he talked to J.R. about rent on August 10th or 11th. He provided J.R. a rent cheque August 13th. This was sent back because the Landlord wanted a money order. He dropped a money order off on August 19th.

Analysis

Section 72 of the *Act* states:

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings]...by one party to a dispute resolution proceeding to another party or to the director.

The Landlord filed their application August 12, 2019. Based on the testimony of the parties, I find the Tenants had not yet vacated the rental unit on this date. I also find based on the testimony of the parties that the Tenants had not yet paid the outstanding rent on August 12, 2019. Therefore, I find it was reasonable for the Landlord to file the application for an Order of Possession and unpaid rent. I find the Landlord is entitled to reimbursement for the \$100.00 filing fee. I issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is entitled to reimbursement for the \$100.00 filing fee. I issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 07, 2019

Residential Tenancy Branch