



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDC, OPC, FF
Tenant: CNC, RP, AAT, PSF, OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 5, 2020.

The Landlord and the Tenant both attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Preliminary Matters – Landlord’s application

The Landlord stated she did not serve her Notice of Hearing or her evidence package to the Tenant until September 26, 2020, at which point she served it to the Tenant in person. The Landlord provided no explanation as to why it took her so long to serve her documentation to the Tenant.

As stated in the hearing, the Landlord should have served her application and Notice of Hearing to the Tenant within 3 days of being given it by our branch, which would have been at the end of August. In any event, the Landlord had to at least ensure the Tenant received all of her documentation (Notice of Hearing and all evidence) no later than 14 days before the hearing, which would have been no later than September 21, 2020.

Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the applicant’s evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondents not less than 14 days before the hearing.

Further, Rule 3.1 states the following:

Documents that must be served with the Notice of Dispute Resolution Proceeding Package

*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 (RTB-114) or direct request process fact sheet (RTB-130) 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, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

The Landlord has breached multiple parts of the Rules of Procedure. As the Landlord failed to serve her Notice of Hearing and evidence within the acceptable time frame, her application is dismissed, in full, without leave.

Preliminary Matters – Tenant's application

With respect to the Tenant's application/Notice of Hearing, I note she stated she personally served it to the Landlord on August 23, 2020. The Landlord acknowledged getting it this same day. The Tenant stated she did not serve any of her documentary evidence to the Landlord. She only uploaded it for me to view. As stated in the hearing, Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the applicant's evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondents not less than 14 days before the hearing. Since the Tenant failed to serve her evidence on the Landlord/Respondent, I find it is not admissible.

Both parties relied on oral testimony only during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the “Act”), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in the Tenant’s application deals with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant’s application with the exception of the following ground:

- to cancel a 1-Month Notice to End Tenancy for Cause (the “Notice”).

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlords’ Notice cancelled?
 - If not, are the Landlords entitled to an Order of Possession?

Background, Evidence and Analysis

The landlord stated she posted the Notice on the Tenant’s door on August 14, 2020. The Tenant acknowledged getting the Notice that same day. However, the Tenant stated that the Landlord only gave her the first page of the Notice, and did not provide pages 2 of 3 and 3 of 3. The Tenant stated she had no idea why she got the Notice because none of this information was on page 1 of the Notice.

The Landlord stated she gave all 3 pages of the Notice to the Tenant. However, the Landlord did not provide any proof of service documentation to corroborate that the complete Notice was served to the Tenant.

When a Tenant applies to cancel a Notice, the burden of proof rests with the Landlord to substantiate that a valid Notice was issued, served, and that there is a sufficient basis for the grounds selected on the Notice. In this case, I find the Landlord has failed to provide sufficient corroborating evidence to show she served the *complete* 3 page Notice to the Tenant. I note the second and third pages of the standard Notice usually contains the grounds for ending the tenancy, as well as the “details of cause”. There is insufficient evidence that the Landlord stated to the Tenant what the grounds were for ending the tenancy.

Section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord.

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice,*
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
 - (e) when given by a landlord, be in the approved form.*

Ultimately, without further proof to substantiate and corroborate the Notice, and what was served to the Tenant, I am not satisfied that a complete Notice, which lists the “grounds” for ending the tenancy was served to the Tenant. Given this, I hereby cancel the Notice, issued on August 14, 2020.

Accordingly, the tenancy continues at this time and until such time it legally ends.

It is important to note that I have made no finding as to whether the landlord has a basis under the Act for ending the tenancy. The landlord remains at liberty to re-issue a new Notice to End Tenancy should the landlord decide to pursue eviction.

Conclusion

The Notice issued on August 14, 2020, has been cancelled and the tenancy continues at this time.

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 6, 2020

Residential Tenancy Branch