



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNC-MT, FFT
For the landlord: OPC, MNRL, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of the One Month Notice to End Tenancy for Cause pursuant to section 47;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession under a One Month Notice to End Tenancy for Cause ("the Notice"), pursuant to sections 47 and 55;
- a monetary order for compensation for unpaid rent, pursuant to section 67;
- an authorization to recover the filing fee for this application, under section 72.

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

Preliminary Issue – Service

The tenant affirmed she served her application and evidence (the materials) in person to the landlord's office within three days from the date the notice of hearing was issued. At a later point the tenant affirmed she served the materials on the 2nd or 3rd day after the notice of hearing was issued.

The landlord stated she did not receive any document from the tenant and was not aware of the tenant's application. The landlord said she has not been meeting any tenant in person and all the tenants are asked to serve documents in the mail slot because of Covid.

Based on the landlord's more precise and straightforward testimony, I find the tenant did not serve her materials.

Rule of Procedure 3.1 states:

3.1 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].

(emphasis added)

Based on the foregoing, I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The tenant confirmed receipt of the landlord's materials in November 2020. Based on the testimonies, I find the tenant was served the landlord's materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states 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 regarding the order of possession under the Notice and the continuation of this tenancy is not sufficiently related to any of the landlord's other claims to warrant that they be heard together.

The landlord's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the landlord's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the notice?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate her application.

Both parties agreed the tenancy started on June 01, 2019. Monthly rent is \$950.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$475.00 was collected and the landlord holds it in trust.

Both parties also agreed the Notice was posted on the tenant's door on October 03, 2020. The tenant affirmed she received the Notice containing 3 pages. At a later point the tenant affirmed she only received pages 1 and 3 of the notice.

The landlord affirmed she served the Notice containing 3 pages and the Notice's second page has the reason to issue the Notice: the tenant is repeatedly late paying rent.

A partial copy of the Notice dated October 03, 2020 was submitted into evidence. Page 2 was not submitted. Page 3 does not indicate the 'details of events'.

I note that both parties were instructed at the outset of the hearing that only one person can speak at the same time. Towards the end of the hearing the tenant interrupted twice the landlord as she was speaking. I warned the tenant that if she interrupted one more time I would mute her, pursuant to Rule of Procedure 6.10.

Analysis

Based on both parties testimony, I find the Notice dated October 03, 2020 was served on October 03, 2020 and the tenant received it on that date.

Section 52 of the Act states:

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.

(emphasis added)

The partial copy of the Notice submitted into evidence does not contain page 2. Page 3 does not indicate the 'details of events'. The landlord must submit the complete copy of the Notice so the arbitrator can confirm its compliance with section 52 of the Act.

I find the Notice partially submitted is not in accordance with section 52(d) of the Act, as it does not specify the details of the cause and its second page was not submitted into evidence.

As both parties were not successful with their applications, each party should bear their own filing fee.

Conclusion

I dismiss without leave to reapply the landlord's application.

I dismiss with leave to reapply the tenant's application.

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: January 21, 2021

Residential Tenancy Branch