



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNL, LRE, OLC
For the landlords: OPL, 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 Two Month Notice to End Tenancy for Landlord's Use issued pursuant to section 49;
- an order to restrict or suspend the landlord's right of entry, pursuant to section 70; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62.

The landlords' application pursuant to the Act is for:

- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Notice), pursuant to sections 49 and 55; and
- 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 did not serve the notice of hearing to the respondents in any of the ways described in sections 88 and 89 of the Act. The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

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 without leave to reapply.

The tenant confirmed receipt of the landlords' notice of hearing and evidence (the materials) on December 22, 2020. Based on the tenant's testimony, I find the landlords served the materials in accordance with section 88 and 89 of the Act.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenant voluntarily vacated the rental unit on January 01, 2021.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Filing Fee

The Notice submitted as evidence is dated October 31, 2020. The effective date of the Notice is December 31, 2020. The landlords' application was filed on December 15, 2020.

As the tenants voluntarily vacated on the first day after the effective date of the Notice and the landlords submitted their application 15 days before the effective date of the Notice, there was no need for the Landlords to apply for Dispute Resolution.

Accordingly, the landlords must bear the cost of the filing fee.

Conclusion

I dismiss both applications without 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: January 27, 2021

Residential Tenancy Branch