



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPL, FFL
For the Tenant: CNR, CNL, AAT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant's first application is for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated November 1, 2020; and
- for an Order to allow access for the Tenant or their guests.

The Tenant's second application is for:

- An Order to cancel a Two Month Notice to end the Tenancy for the Landlord's Use dated November 28, 2020 ("Two Month Notice"); and
- a Monetary Order for damage or compensation under the Act of \$5,000.00.

The Landlord filed a claim for:

- an Order of Possession, further to having served the Tenant with the Two Month Notice; and
- recovery of the \$100.00 Application filing fee.

The Tenant, the Landlord, T.B., and an agent for the Landlord, P.B., (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy

Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

At the outset of the hearing, I asked the Agent for the Landlord’s name in this matter, as the Tenant suggested that the Agent was not a Landlord. As such, the Agent advised me that his mother, T.B., is the owner of the residential property, that she is the Landlord, and that she had authorized the Agent to appear on her behalf. The Landlord was with the Agent in the hearing and confirmed her authorization for him to appear on her behalf.

As a result, I have amended the Respondent’s name in the Application to that of the Landlord, T.B., pursuant to section 64(3)(c) of the Act and Rule 4.2.

I considered service of the Notices of Dispute Resolution Hearing, the Applications, and the Parties’ evidentiary submissions on each other. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by putting them through the Agent’s mail slot. However, section 89 of the Act states that there are “special rules for certain documents”. Section 89 (1) states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

. . .

[emphasis added]

The importance of a party receiving the other party’s Application, Notice of Hearing, and evidentiary submissions is so important that only certain types of service are acceptable under the Act.

As I find that the Tenant did not serve either of her Applications, Notices of Hearing or evidentiary submissions on the Landlord in compliance with the Act, **I must dismiss the Tenant's Applications without leave to reapply.** The Tenant acknowledged receipt of the Landlord's Notice of Hearing and documents by registered mail.

At the prospect of being evicted, the Tenant expressed concern about being able to find another rental unit quickly, and she requested until the end of March 2021 to find a new place to live. As the effective vacancy date of the eviction notices have both passed, the Act requires me to give the Tenant only two days in which to move from the residential property, once served with the order of possession by the Landlord. However, the Landlord was kind enough to agree to let the Tenant stay until the end of February 2021, despite the requirements of the Act, otherwise. The Tenant agreed to pay rent to the Landlord for February 2021.

The Agent submitted a copy of the Two Month Notice which was signed and dated November 28, 2020, it has the rental unit address, it was served in person on November 28, 2020, with an effective vacancy date of January 31, 2021, and it was served on the ground that the child of the Landlord (the Agent) will occupy the rental unit. I find that the Two Month Notice is compliant with section 52 of the Act, as to form and content.

Accordingly, and pursuant to section 55 of the Act, I award the Landlord with an Order of Possession, effective on February 28 at 1:00 p.m. Pursuant to section 72 of the Act, I also award the Landlord with recovery of the \$100.00 Application filing fee, given his success in his Application. The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit in complete satisfaction of this award.

Conclusion

The Tenant's applications are dismissed without leave to reapply, as the Tenant failed to serve the Landlord with her Notices of Hearing and associated documents pursuant to section 89 of the Act.

The Landlord's claim for an Order of Possession is successful, as the Tenant failed to serve the Landlord with her Applications, Notices of Hearing or evidentiary submissions pursuant to the Act. I also award the Landlord recovery of the \$100.00 Application filing fee, given his success. The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit in full satisfaction of this award.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord

effective on February 28, 2021 at 1:00 p.m. **after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 01, 2021

Residential Tenancy Branch