



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: CNR, OLC

LL: OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant submitted an Application for Dispute Resolution on December 12, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 8, 2020 (the “10 Day Notice”); and
- an order that the Landlord comply with the *Act*.

The Landlord submitted two Applications for Dispute Resolution which were made on December 21, 2020 and January 11, 2021 (the “Landlord’s Applications”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent;
- a monetary order for damage, compensation, or loss; and
- an order granting recovery of the filing fee.

The Tenant, the Landlord, and the Landlord’s Agent S.A. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant stated that he was not aware that he was required to serve the Landlord with a copy of his Application. The Landlord confirmed that he has not received any documents from the Tenant.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure 3.1 (the “Rules of Procedure”); 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].*

Section 89 of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution: An application for dispute resolution,...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;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director’s orders: delivery and service of document]...*

The Residential Tenancy Branch Policy Guideline 12 (the “Policy Guidelines”) states that; all parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the

Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

I find that the Tenant has not served the Landlord in a manner required by Section 89(1) of the *Act*. Furthermore, the Landlord stated that he has not received the Application package or documentary evidence from the Tenant. In light of the above, I dismiss the Tenant's Application with leave to reapply.

The Landlord's Agent stated that the Tenant was served with the Landlord's Applications and documentary evidence by Registered Mail. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

At the start of the hearing, the Landlord's Agent stated that the Landlord is no longer seeking a monetary order relating to the unpaid rent. The Landlord was still seeking an order of possession based on the 10 Day Notice dated December 8, 2020.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on the 10 Day Notice dated December 8, 2020, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2019. Currently, rent in the amount of \$1,050.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$525.00 which the Landlord continues to hold. The Landlord submitted a copy of the tenancy agreement in support.

The Landlord's Agent stated that the Landlord is seeking to end the tenancy based on unpaid rent. The Landlord's Agent stated that the Tenant was served a 10 Day Notice dated December 8, 2020 with an effective date of December 13, 2020 in person on December 8, 2020. The Landlord provided a copy of the 10 Day Notice which indicates that the Tenant failed to pay rent in the amount of \$570.00 to the Landlord which was due on December 1, 2020. The Tenant stated several times during the hearing that the rent was paid in full.

The Landlord was provided with several opportunities during the hearing to explain the amount of unpaid rent that was owed to the Landlord in relation to the 10 Day Notice. The Landlord was not prepared during the hearing and stated that the Tenant paid \$1,030.00 for December 2020 rent. The Landlord was unable to explain the amount of \$570.00 which was indicated on the 10 Day Notice. The Landlord's Agent attempted several times to discuss the matter with the Landlord who did not submit any documentary evidence to support of any amount of unpaid rent for which the Landlord was seeking to end the tenancy over. The Landlord stated that \$20.00 was owing for November 2020 and \$30.00 for December 2020. The Landlord stated that he had information on his work computer that was not available to him during the hearing.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agent testified that the Landlord served the Tenant in person with the 10 Day Notice dated December 8, 2020 with an effective vacancy date of December 13,

2020. The Tenant confirmed having received the 10 Day Notice. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act.

The 10 Day Notice dated December 8, 2020 states that the Tenant failed to pay rent in the amount of \$570.00 which was due on December 1, 2020. The Landlord is seeking to end the tenancy based on this amount of unpaid rent. During the hearing, the Landlord was unable to explain the amount of unpaid rent that was indicated on the 10 Day Notice. The Tenant stated that he paid the full amount of rent.

I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant failed to pay rent as indicated on the 10 Day Notice. As such, I cancel the 10 Day Notice dated December 8, 2020. I order that the tenancy continue until it is ended in accordance with the *Act*.

I therefore dismiss the Landlord's Applications without leave to reapply.

Conclusion

The 10 Day Notice dated December 8, 2020 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

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: March 09, 2021

Residential Tenancy Branch