



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 12, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenant and the Landlord attended the hearing at the appointed date and time. The Landlord confirmed receipt of the Tenant's Application package. As such, I find that the Application was sufficiently served pursuant to Section 89 of the Act. The Landlord did not submit any documentary evidence in preparation for the hearing.

At the start of the hearing, I noted that I had not been provided a copy of the notice to end tenancy the Tenant sought to cancel. The Tenant acknowledged that he did not provide it to the Residential Tenancy Branch at the time of filing or at any other time, claiming he did not know he had to provide the documents.

The Landlord stated that she did not have a copy of the 10 Day Notice that she was seeking to end the tenancy with. Neither party had a copy of the 10 Day Notice with them during the hearing to be able to read the pertinent information required for me to make a decision.

Section 59 provides that an Application for Dispute Resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceeding. Rules 2.5 and 3.1 require that a tenant disputing a notice to end tenancy must provide a copy of the notice to end tenancy they seek to dispute at the time of filing the Application for Dispute Resolution and serve it upon the respondent along with the proceeding package. These requirements are in keeping with the principles of natural justice and intended to ensure a fair proceeding.

Below, I have reproduced Rule 2.5 for the parties' reference:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

[My emphasis underlined]

When a tenant files an online application to dispute a notice to end tenancy, the online system prompts the applicant to upload the notice to end tenancy or deliver it to the Residential Tenancy Branch within three days.

If a document is not available at the time of filing, an applicant may submit the document as soon as possible but not later than 14 days before the hearing, as provided under Rule 3.14.

In seeking to cancel a notice to end tenancy, I can think of no other document that is more relevant than the notice to end tenancy. The tenant did not provide a copy of the notice to end tenancy he seeks to cancel when he filed, at any other time, for my review or with the hearing package he sent to the landlord. The tenant did not provide a reason for not providing the notice to end tenancy other than he stated he did not know he had to which is not a basis for not complying with the requirements of the Act or the Rules of Procedure. Therefore, I find the Tenant's actions, or lack thereof, to be a violation of the requirements of section 59 of the Act and Rules 2.5 and 3.1 of the Rules of Procedure.

In light of the above, I dismissed the Tenant's application to dispute 10 Day Notice to End Tenancy. I do not provide the Landlord with an Order of Possession as provided under section 55(1) of the Act as I do not have a copy of a notice to end tenancy before me and I am unable to verify that the notice complies with the form and content requirements of the Act. The Landlord is at liberty to file her own Application for Dispute Resolution to seek an Order of Possession if she is of the view she is entitled to one.

Conclusion

The Tenant's Application is dismissed with leave to reapply. This is not an extension of any statutory timeline. The Landlord is not entitled to an Order of Possession given that neither party provided a copy of the 10 Day Notice for my consideration.

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: April 12, 2021

Residential Tenancy Branch