



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: OPR, MNRL, FFL

Tenant's application: CNR, OLC, MNDCT, RR, LRE, LAT, CNC

Introduction

This hearing was set to deal with applications filed by both the tenants and the landlord. The tenants applied for multiple remedies including cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and cancellation of a One Month Notice to End Tenancy for Cause. The landlord had applied for an Order of Possession and Monetary Order for unpaid rent.

At the hearing, only the landlord appeared.

The landlord confirmed the tenants had served him with their Application for Dispute Resolution. The landlord testified that the tenants vacated the rental unit on March 20, 2021 after the parties participated in another dispute resolution proceeding scheduled to deal with the landlord application for an expedited hearing (file number referenced on the cover page of this decision). The landlord also confirmed that he was provided an Order of Possession under that previous proceeding. Since the tenants did not appear for their hearing, and it is unnecessary to further consider the validity or enforceability of the Notices to End Tenancy or the landlord's entitlement to an Order of Possession, I dismissed the tenant's application, in its entirety, without leave to reapply.

As for the landlord's Application for Dispute Resolution, I find the landlord's request for an Order of Possession to be moot since the landlord already obtained an Order of Possession and the tenants have already vacated the rental unit. The landlord wished to proceed with his monetary claims against the tenant.

As I explained to the landlord a number of times during the hearing, where a respondent does not appear at the hearing, the applicant bears the burden to provide that each respondent was served with the applicant's hearing materials in a manner that complies with the Act. Since the tenants did not appear at the hearing, it is necessary to determine whether the tenants were served with the landlord's claims against them and I explored service of the landlord's hearing materials upon the tenants.

The landlord testified that he sent his proceeding package to the both tenants in a single registered mail package sometime in February 2021. The landlord did not have the registered mail receipt in front of him and he was unable to provide the date of mailing or the registered mail tracking number. The landlord stated he had already provided the Residential Tenancy Branch with the registered mail receipt. I reviewed the materials received from the landlord and I noted that the only registered mail receipt provided by the landlord that was before me was dated April 21, 2021. The landlord stated the package sent on April 21, 2021 contained additional evidence in support of increasing his monetary claim to include damage to the property, cleaning and additional loss of rent.

As for the registered mail sent to the tenants in February 2021, the landlord stated he would still have the receipt in his paperwork and that he could deliver a copy of it to the Service BC office by the end of the day on April 26, 2021. I authorized and ordered the landlord to provide a copy of the registered mail receipt for the registered mail sent to the tenants in February 2021 by the end of the day, April 26, 2021. I continued to hear the landlord's claim for unpaid rent, as claimed on his Application for Dispute Resolution, and informed the landlord that my decision would be contingent upon receiving the registered mail receipt as ordered above.

The landlord presented his case with respect to unpaid rent; however, the landlord also wanted to present his case with respect to additional damages and loss suffered after the tenancy ended. The landlord had a registered mail package addressed to both tenants at the rental unit on April 21, 2021 in an attempt to amend the claim to include these additional claims. The landlord testified that he did not have a forwarding address for the tenants so he sent it to the tenants at the rental unit address as he believes the tenants have a mail forwarding service in place. A search of the registered mail tracking number for the April 21, 2021 registered mail package showed Canada Post has redirected the registered mail to the recipient's new address but at the time of the hearing the mail was still in transit.

An amendment has to be received by the respondent at least 14 clear days before the scheduled hearing as provided under Rule 4.6 of the rules of Procedure. Rule 4.6 provided, in part:

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

The landlord's amendment has yet to be received by the tenants and I declined to permit the landlord's claim to be amended to include damage, cleaning and other losses.

After the teleconference call ended, the tenant delivered a copy of a registered mail receipt, including tracking number, to the Service BC office. It shows that the landlord sent registered mail addressed to both tenants in a single registered mail envelope on February 12, 2021. A search of the tracking number shows the registered mail was delivered on February 17, 2021; however, when I turn to the name and/or signature of the recipient, there is no signature of the recipient and the name of the person receiving the registered mail was merely listed as the tenants' surname by Canada Post. Both of the tenants have the same surname. As such, I find I am unable to determine which of the tenants received the registered mail. As stated previously, an applicant is required to serve each respondent and since I am unable to determine which of the two tenants received the registered mail, I cannot conclude which tenant was served. Therefore, I cannot proceed with the landlord's application due to insufficient service and the landlord's application is dismissed with leave to reapply.

Conclusion

The tenant's Application for Dispute Resolution was dismissed, without leave to reapply, due to their failure to appear at their hearing.

The landlord's claims against the tenants are dismissed with leave to reapply as I was not satisfied the tenants were sufficiently served with the landlord's claims against them.

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 28, 2021

Residential Tenancy Branch