



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Access Pacific
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 31, 2021 (the “Application”). The Tenant applied for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement and to recover the filing fee.

The Tenant filed an amendment March 31, 2021 adding a request for compensation (the “Amendment”).

The Tenant appeared at the hearing with D.B. to assist. The Agent for the Landlords appeared at the hearing.

The parties agreed the Tenant vacated the rental unit March 15, 2021. Given this, I told D.B. that the request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement is a moot point and asked if the Tenant was withdrawing the request. After a discussion about this, D.B. confirmed the Tenant was withdrawing the request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement. D.B. confirmed the Tenant continued to seek compensation.

I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlords did not submit evidence. I addressed service of the hearing package, Amendment and Tenant’s evidence.

The Agent confirmed receipt of the hearing package. The Agent testified that she did not receive any further documents or evidence from the Tenant.

D.B. testified that the evidence and Amendment were posted to the door at the Landlords' address on March 30, 2021. D.B. testified that he took a picture of this and emailed it to the Agent. The Tenant had not submitted documentary evidence to support that the evidence and Amendment were served as stated.

The Agent denied that the evidence and Amendment were posted to the door at the Landlords' address and denied that D.B. emailed her a photo of this.

Rule 4.6 of the Rules states:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence **must be produced and served upon each respondent** by the applicant **in a manner required by section 89 of the Residential Tenancy Act** or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

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.

(emphasis added)

The parties gave conflicting testimony about whether the Amendment was served on the Landlords. The Tenant did not submit documentary evidence to show that the Amendment was served as stated. Therefore, I was not satisfied the Amendment was served on the Landlords.

Further, the Amendment had to be served in accordance with section 89(1) of the *Residential Tenancy Act* (the "Act") which states:

89 (1) 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 documents];
- (f) by any other means of service provided for in the regulations.

(emphasis added)

Posting the Amendment to the door at the Landlords' address was not a method of service permitted under section 89(1) of the *Act* and therefore the Amendment was not properly served in any event.

Given I was not satisfied of service of the Amendment, I did not permit the Application to be amended as requested. As discussed at the hearing, the Tenant is permitted to file an Application for Dispute Resolution seeking compensation. This decision does not extend any time limits set out in the *Act*.

In relation to the Tenant's evidence, I am not satisfied it was served on the Landlords given the conflicting testimony and absence of documentary evidence to prove service. The Tenant was required to serve the evidence pursuant to rules 3.1 and 3.14 of the Rules. The Tenant was required to prove service of the evidence pursuant to rule 3.5 of the Rules. Pursuant to rule 3.17 of the Rules, I have excluded the evidence as I find it would be unfair to consider it when I am not satisfied it was served.

Given the above, the only remaining issue was the request to recover the filing fee. D.B. proceeded with this request and I heard the parties on it. The parties were given

an opportunity to make submissions about the filing fee issue. I have only referred to the testimony and submissions I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to recover the filing fee?

Background and Evidence

There was no issue that there was a tenancy agreement between the parties.

D.B. testified that the Tenant had to file the Application given disturbances in the rental unit and the Landlords not fulfilling the terms of the tenancy agreement. D.B. testified that the request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement was a request to end the tenancy early. D.B. testified that the Tenant had asked the Landlords to end the tenancy early and the Landlords had not agreed to this without the Tenant paying further costs. D.B. testified that the Tenant gave notice ending the tenancy without the agreement of the Landlords prior to filing the Application.

The Agent testified that the Landlords were nice and tried to find a replacement tenant. The Agent said the Tenant was “greedy” and damaged the rental unit.

Analysis

Section 72(1) of the *Act* states:

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings] or 79 (3) (b) [application for review of director's decision] by one party to a dispute resolution proceeding to another party or to the director.

I accept based on the testimony of D.B. that the Tenant filed the Application to end the tenancy early. I accept based on the testimony of D.B. that the Tenant had given notice ending the tenancy early prior to filing the Application. I accept based on the testimony of the parties that the Tenant vacated the rental unit March 15, 2021, prior to the hearing.

I find that the Tenant chose to end the tenancy early prior to filing the Application and vacated the rental unit prior to the hearing and therefore it is the Tenant’s own actions

that resulted in the request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement being a moot point as of the hearing date. Therefore, I am not satisfied the Tenant is entitled to recover the filing fee and dismiss this request without leave to re-apply.

Conclusion

I have not permitted the Application to be amended.

The Tenant withdrew the request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement as it is a moot point as the Tenant has vacated the rental unit.

The request to recover the filing fee is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 03, 2021

Residential Tenancy Branch