



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C21 KOOTENAY HOMES (2018) LTD.
AS AGENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

The Advocate for the Tenant stated that:

- He is representing the Tenant, who is his mother;
- On April 02, 2021 the Dispute Resolution Package and the Tenant's evidence was sent to the Landlord, via email;
- These documents were sent to an email address for the Agent for the Landlord's company;
- He was not told the Agent for the Landlord was unable to access the hearing documents and/or evidence;
- The Landlord did not provide him with an email address for the purpose of serving hearing documents; and
- He did not regularly communicate with the Landlord at the email address for the Agent for the Landlord's company.

The Agent for the Landlord stated that:

- Her company received the email the Advocate for the Tenant sent to the email address for her company;
- Her company forwarded the Advocate for the Tenant's email to her email address, but she was unable to open the attached documents;
- On April 07, 2021, she sent a text message to the Tenant's daughter, asking that the hearing documents be served to her in another manner, to which the daughter did not reply;

- On April 15, 2021 she spoke with the Tenant's daughter and asked her to provide the hearing documents in a different manner, at which time the daughter told her she would speak to her mother and brother;
- She did not receive the hearing documents or evidence from the Tenant or anyone acting on behalf of the Tenant;
- On April 27, 2021 she contacted the Residential Tenancy Branch and was provided with the information needed to join the teleconference today;
- The Residential Tenancy Branch did not provide her with the Tenant's evidence;
- The Landlord did not provide the Tenant with an email address for the purpose of serving evidence; and
- The Landlord did not regularly communicate with the Tenant through the email address for the Agent for the Landlord's company.

Section 89(1) of the *Residential Tenancy Act (Act)* permits a party to serve an Application for Dispute Resolution to the other party in 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.

Section 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

As the Tenant was not provided with an email address for the purposes of serving hearing documents, I find that the hearing documents were not served pursuant to section 89(1)(f) of the *Act*.

At the hearing the Agent for the Landlord stated that she understands the Tenant has applied to cancel a One Month Notice to End Tenancy for Cause and she is prepared to proceed with the hearing, even though the Landlord was not properly served with the

Application for Dispute Resolution. On the basis of this information, I am satisfied the Landlord is prepared to proceed with the hearing today.

Section 88 of the *Act* permits parties to serve evidence 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

Section 43(1) of the *Residential Tenancy Regulation* stipulates that documents described in section 88 of the *Act* may, for the purposes of section 88(j) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

As the Tenant was not provided with an email address for the purposes of serving evidence, I find that the Tenant's evidence was not served pursuant to section 89(1)(f) of the *Act*. As the Tenant's evidence was not properly served to the Landlord and the Landlord has not received the Tenant's evidence, the Tenant's evidence was not accepted as evidence for these proceedings.

The Advocate for the Tenant was advised that he can discuss his documentary evidence during these proceedings, but I would not be physically viewing those documents.

After being advised that the Tenant's evidence would not be accepted for these proceedings, the Advocate for the Tenant requested an adjournment for the purposes of re-serving the evidence to the Landlord. In support of the request for an adjournment, he stated that believed he was permitted to serve hearing documents to the other party by email.

The Agent for the Landlord opposed the adjournment on the basis that the Tenant has not paid rent for May of 2022 and an adjournment would be unreasonable, given that rent has not been paid. She stated that if the matter is adjourned the Landlord will be pursuing an Order of Possession on the basis of unpaid rent.

The Advocate for the Tenant acknowledged that rent has not been paid for May of 2022 and he believes tenancy will likely end on that basis.

After considering the submissions of both parties, the request for an adjournment was denied. In reaching this conclusion I was influenced by:

- The absence of any evidence to suggest that an adjournment would result in the parties reaching a resolution;
- My find that the Advocate for the Tenant should have taken reasonable steps to determine how documents related to these proceedings can be properly served to the other party;
- The Advocate for the Tenant will have the opportunity to present the Tenant's documentary evidence through oral testimony; and
- It would be unfair to the Landlord to allow this tenancy to continue for another 6-8 weeks, given that she has stopped paying rent.

In determining that the Advocate for the Tenant should have taken reasonable steps to determine how documents related to these proceedings should be served, I note that on page two of the Notice of Dispute Resolution Proceeding parties are directed to the Residential Tenancy Branch website at www.gov.bc.ca/landlordtenant/submit. This website provides participants with important information, including a link to information on how to serve evidence to the other party.

The link titled “Review Rules for Serving Documents” describes various ways of serving the Application for Dispute Resolution and evidence. One of the methods identified is to email a copy to the email address provided for service.

Issue(s) to be Decided

Should a One Month Notice to End Tenancy for Cause be set aside?

Background and Evidence

Prior to explaining the hearing process the parties mutually agreed to settle all issues in dispute at these proceedings under the following terms:

- The tenancy will end, by mutual agreement, on May 31, 2021;
- The Landlord will receive an Order of Possession that requires the Tenant to vacate the rental unit by May 31, 2021;
- The Tenant will pay rent for May of 2021, in the amount of \$669.38; and
- The Landlord will receive an Order of Possession for \$669.38.

The aforementioned settlement agreement was summarized for the parties on at least two occasions. The Agent for the Landlord and the Advocate for the Tenant clearly indicated their intent to resolve this dispute under these terms.

The Agent for the Landlord and the Advocate for the Tenant each acknowledged that they understood they were not required to enter into this agreement and that they were doing so voluntarily.

The Agent for the Landlord and the Advocate for the Tenant each acknowledged that they understood the agreement was final and binding.

Analysis

All issues in dispute at these proceedings have been settled in accordance with the aforementioned settlement agreement.

Conclusion

The Landlord is granted an Order of Possession that is effective **at 1:00 p.m. on May 31, 2021.** This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord is granted a monetary Order for \$669.38. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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

Dated: May 13, 2021

Residential Tenancy Branch