



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, DRI, MNDC, OLC, PSF, LRE, OPT, AAT, LAT, RR
For the landlord: OPR, MNR, FF

Introduction, Preliminary and Procedural Matters-

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied on February 5, and February 7, 2021, by amendment, for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (**Notice**) issued by the landlord;
- to dispute a rent increase that is above the amount allowed by law;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order of possession of the rental unit as the tenant has been denied access;
- an order requiring the landlord to allow access to the rental unit for the tenant and his guests;
- authorization to change the locks to the rental unit; and
- a reduction in monthly rent.

The landlord applied on February 10, 2021, for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;

- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

Procedural Issue #1- Hearing issues –

Rule 6.10 of the Residential Tenancy Branch Rules of Procedure (Rules) stipulates that it is not permissible to disrupt the hearing and it authorizes me to “give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately”. It further authorizes me to exclude a party from the hearing if they do not comply with my directions regarding their behavior and the arbitrator may proceed in the absence of that excluded party.

The tenant and the landlord attended the hearing. Upon attempting to instruct the parties about the hearing process and conduct expected at the hearing, and asking the tenant a basic question to ensure he was still living in the rental unit, the tenant proceeded to start talking and would not stop. I attempted to gain his attention, but he indicated I could not stop him from talking and that he would not be interrupted. The tenant was aggressive and confrontational.

I found it necessary to immediately and without warning use the “mute” feature of the teleconference hearing on the tenant. What this meant was the tenant could no longer be heard, although the tenant could listen to the hearing.

I then proceeded to explain the hearing process to the parties, although I was unaware at that point if or when the tenant stopped speaking while on mute or if he heard the explanation.

I then returned the tenant to the teleconference hearing and he was silent. I affirmed both parties into the hearing and the hearing continued. Later in the hearing, I found it necessary to mute the tenant again, when he was not responsive to my questions and attempted to repeatedly talk over me.

After a period of time, I returned the tenant to the hearing. The tenant was able to provide responses to relevant questions and testimony, although he did speak to other, unrelated matters, in a limited fashion.

Procedural Issue #2 – Severing unrelated issues –

Rule 2.3 stipulates that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice. The balance of the tenant's application will be addressed within this Decision.

Procedural Issue #3- Service of documents –

As to service of the hearing documents, the landlord confirmed receiving the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package).

The tenant asserted he was not properly served with the landlord's application package as it was sent by email. The tenant objected to the landlord's application, due to the service issue.

In response to my inquiry, the landlord said he served his application package by email, at the tenant's request. The landlord said that he then served the tenant with the hard copies of the application package three weeks before the hearing. The tenant countered this statement and said he received it one week before the hearing and again objected to hearing the landlord's application.

Section 59(3) of the Act requires that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

Section 89(1) of the Act, in effect at the time the landlord filed his application, requires that an application for dispute resolution, which includes the notice of hearing, must be given by handing the documents to the person or by registered mail to the address at which the person resides, or by registered mail to a forwarding address provided by the tenant.

In other words, the landlord was required to serve his application for dispute resolution by personal service to the tenant or by sending the documents to the tenant by registered mail, within three days of the documents being made available to him, in this case, on February 19, 2021.

The landlord confirmed that he originally sent the application for dispute resolution by email and only personally served the tenant sometime within the three weeks prior to the hearing on May 4, 2021.

For these reasons, I find the landlord submitted insufficient evidence that his application for dispute resolution was served to the tenant according to the requirements of section 59(3) or 89 of the Act, within three days of receiving the application package. I therefore dismiss the landlord's application for monetary compensation, **with leave to reapply**, due to service issues as described above. I note that the matter of an order of possession of the rental unit will be considered on the tenant's application.

I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

Procedural Issue #4- Recordings prohibited –

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and **relevant to the issues** and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice in order to continue the tenancy?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of September 1, 2020, for a monthly rent of \$650, due on the 1st day of the month. The landlord indicated that the rental unit was a single room occupancy.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules states the landlord is to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The landlord said he served the tenant with the 10 Day Notice on February 2, 2021, at 9:30 p.m., by hand delivery. The 10 Day Notice listed unpaid rent of \$650 owed as of February 1, 2021. The effective move-out date listed was February 12, 2021. The landlord submitted into evidence a signed and dated witness statement, on RTB form 34, substantiating service of the Notice on the date and time indicated by the landlord. Filed into evidence by the landlord was a copy of a 3-page Notice.

The landlord asserted that since the issuance of the Notice, the tenant did not pay any rent for February 2021. The landlord submitted that the tenant paid the monthly rent for March and April and \$400 for May 2021. The landlord submitted that through the date of the hearing, the tenant owes a rent deficiency of \$900.

Tenant's response-

The tenant submitted that he did not receive the 10 Day Notice until February 7, 2021, by email. The tenant asserted that the Notice was not valid due to email service. The tenant also claimed that he was not provided the full document.

The tenant confirmed that he did not pay the monthly rent for February 2021, and has paid \$400 for May 2021.

The landlord denied the tenant's statement, saying that he served the tenant the full 3-page Notice.

Analysis

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy]*.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant **must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.**

In this case, I find the landlord submitted sufficient evidence to prove that the tenant was served a full copy of the 10 Day Notice by personal service on February 2, 2021. I find support for this conclusion by the landlord's affirmed testimony and the signed witness statement. I find this evidence more persuasive and consistent than the tenant's unsupported statement.

Additionally, the tenant confirmed receiving the Notice by email on February 7, 2021, and he amended his application on that date to dispute the Notice. I find the tenant was sufficiently served the Notice for purposes of the Act. I also find on a balance of probabilities that the tenant received the full Notice, as the 3rd page contained information for the tenant, including filing an application in dispute of the Notice within 5 days.

Upon hearing from the parties, I find that the tenant owed the landlord rent when the 10 Day Notice was served on him. Further, I find that he did not pay the rent owed to the landlord within five days of receiving the Notice or at all and did not show that he had a legal right to withhold the monthly rent.

I therefore find the landlord submitted sufficient evidence to support the Notice and it must be upheld.

As a result, I dismiss the tenant's application seeking cancellation of the 10 Day Notice, without leave to reapply.

I order the tenancy ended on the effective date of the Notice, or February 12, 2021.

As such, I find that the landlord is entitled to, and I therefore grant the landlord an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1)(b) of the Act. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenant.

Conclusion

The tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply, as I have upheld the 10 Day Notice, as I find it was valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

As to the tenant's request for monetary compensation, I dismiss that portion of his application, with leave to reapply.

As to the remaining issues on the tenant's application, as this tenancy is ending, I dismiss these portions of the tenant's application, without leave to reapply.

The landlord's application for monetary compensation is dismissed, with leave to reapply.

As I did not consider the merits of the landlord's application, I dismiss his request for recovery of the filing fee, without leave to reapply.

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: May 4, 2021

Residential Tenancy Branch