



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPRM-DR, OPR-DR, FFL, CNR, OLC, LRE

Introduction

This hearing was convened as a result of cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

The Landlord applied for a Direct Request Proceeding in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, and to recover the fee for filing his Application for Dispute Resolution. The Landlord's Application for Dispute Resolution was scheduled to be considered at this participatory hearing because the Tenant also filed an Application for Dispute Resolution.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure stipulate that at the hearing, an Applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that each Respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

The Tenant stated that he personally served the Landlord with the Tenant's Dispute Resolution Package. He initially stated he did not recall when he served these documents to the Landlord and he subsequently stated they were served on April 17, 2021. The Landlord stated that he was never served with the Tenant's Application for Dispute Resolution.

I find that the Tenant has submitted insufficient evidence to prove that his Application for Dispute Resolution was personally served to the Landlord. In the absence of evidence to corroborate the Tenant's testimony that it was personally served to the Landlord or to refute the Landlord's testimony it was not received, I find that the Tenant has failed to meet his burden of proving his Application for Dispute Resolution was served.

As the Tenant has failed to prove service of his Application for Dispute Resolution, the Tenant's Application for Dispute Resolution is dismissed, with leave to reapply. I do not find this to be particularly prejudicial to the Tenant, as the most important issue to be determined in the Tenant's application is whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities should be cancelled, which will be determined on the basis of the Landlord's Application for Dispute Resolution. The other issues in dispute in the Tenant's Application for Dispute Resolution would have been severed, pursuant to rule 2.3 of the Residential Tenancy Branch Rules of Procedure, as those matters were not sufficiently related to the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenant retains the right to file another Application for Dispute Resolution in regard to issues related to the tenancy that have not been determined by these proceedings.

The Landlord stated that he personally served the Tenant with the Landlord's Dispute Resolution Package on April 20, 2021. The Tenant stated that the Dispute Resolution Package was not personally served to him, although he found it taped to his door on April 20, 2021. Regardless of whether the Landlord's Application for Dispute Resolution was personally served to the Tenant or taped to his door, I find that the Tenant received the Application for Dispute Resolution on April 20, 2021. I therefore find that the Landlord's Application for Dispute Resolution was sufficiently served to the Tenant on April 20, 2021, pursuant to section 71(2)(b) of the Act.

On April 19, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant with the

Dispute Resolution Package on April 20, 2021. The Tenant stated that no evidence was served to him with the Application for Dispute Resolution.

I find that the Landlord has submitted insufficient evidence to prove that his evidence was served to the Tenant. In the absence of evidence to corroborate the Landlord's testimony that it was personally served to the Tenant or to refute the Tenant's testimony it was not received, I find that the Landlord has failed to meet his burden of proving his evidence was served.

As the Landlord has failed to prove service of his evidence, most of the Landlord's documentary evidence was not accepted as evidence for these proceedings. The Landlord was advised that he has the right to discuss any of the documentary evidence submitted to the Residential Tenancy Branch by the Landlord.

In April of 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on April 24, 2021. The Landlord stated that the Tenant did not serve him with any evidence for these proceedings.

I find that the Tenant has submitted insufficient evidence to prove that his evidence was served to the Landlord. In the absence of evidence to corroborate the Tenant's testimony that it was personally served to the Landlord or to refute the Landlord's testimony it was not received, I find that the Tenant has failed to meet his burden of proving his evidence was served.

As the Tenant has failed to prove service of his evidence, most of the Tenant's documentary evidence was not accepted as evidence for these proceedings. The Tenant was advised that he has the right to discuss any of the documentary evidence submitted to the Residential Tenancy Branch by the Tenant.

As each party submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to the Residential Tenancy Branch, I find it reasonable to accept this document as evidence for these proceedings. I confirmed with the parties that they were each in possession of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities at the time of the hearing.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession or should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?

Is the Landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The Landlord and the Tenant agree that:

- This tenancy began on February 01, 2021;
- The Tenant agreed to pay monthly rent of \$995.00 by the first day of each month;
- Rent is due by the first day of each month;
- Rent for the first two months of the tenancy was paid by e-transfer;
- Rent for April was not paid when it was due on April 01, 2021; and
- The Tenant is still living in the rental unit.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the Tenant on April 06, 2021. The Tenant stated that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was slid under his door on April 06, 2021.

The Landlord stated that:

- rent for April of 2021 has never been paid;
- he did not provide the Tenant with a rent receipt for April, as it was not paid; and
- he did not provide the Tenant with a letter saying these proceedings would be cancelled, as he did not receive rent for April of 2021.

The Tenant stated that:

- on April 14, 2021 he paid \$1,000.00 in rent for April of 2021;
- he paid the \$1,000.00 rent in cash;
- after making the \$1,000.00 cash payment the Landlord promised to provide him with a rent receipt;

- the Landlord never provided the promised rent receipt;
- after making the \$1,000.00 cash payment the Landlord promised to provide him with a letter informing the Tenant that this hearing would be “quashed”; and
- the Landlord never provided the promised letter.

The Landlord and the Tenant agree that they communicated via text messages on several occasions.

The Tenant read out a text message dated April 06, 2021, in which the Landlord agreed to continue the tenancy if the rent was paid by April 13, 2021. The Landlord agreed that he sent this text message but stated he did not withdraw the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as rent was not paid.

The Tenant read out a text message dated April 16, 2021, in which the Landlord informed the Tenant he was filing an Application for Dispute Resolution and in which he agreed to continue the tenancy if the rent and the \$100.00 fee for filing the Application for Dispute Resolution was paid. The Landlord agreed that he sent this text message but he did not withdraw the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as rent was not paid.

The Landlord and the Tenant agree that the Tenant did not respond to the text message of April 16, 2021 until April 22, 2021. The Tenant stated that in the April 22, 2021 text message he told the Landlord he would now not be paying rent, by which he meant he would be paying rent for May of 2021. The Landlord stated that in the April 22, 2021 text message the Tenant told the Landlord him he would now not be paying rent, which he interpreted to mean the Tenant would not be paying rent for April of 2021.

At the hearing the Landlord applied to amend his Application for Dispute Resolution to include a claim for unpaid rent for May of 2021. The Tenant agreed rent was not paid for May of 2021.

The Tenant stated that he does not understand how the Application for Dispute Resolution can be amended during the hearing. He stated that he does not believe he should have to pay rent for May because the Landlord is attempting to end the tenancy.

Analysis

On the basis of the undisputed evidence, I find that the Tenant agreed to pay monthly rent of \$995.00 by the first day of each month.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due, whether or not the the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. As the Tenant submitted no evidence to establish that he had the right, under the *Act*, to deduct any of the rent due on April 01, 2021, I find that he was required to pay \$995.00 in rent on April 01, 2021.

On the basis of the undisputed evidence, I find that the Tenant did not pay the monthly rent when it was due on April 01, 2021.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if rent is not paid when it is due by providing appropriate notice is given to the tenant. A Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is the proper method of serving notice to a tenant when a landlord wishes to end a tenancy pursuant to section 46(1) of the *Act*.

Regardless of whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the Tenant, as the Landlord contends, or was placed under the Tenant's door, as the Tenant contends, I find that the Tenant received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on April 06, 2021. I therefore find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was sufficiently served to the Tenant on April 06, 2021, pursuant to section 71(2)(b) of the *Act*.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. Even if I accepted the Tenant's testimony that he paid the overdue rent on April 14, 2021, the rent would not have been paid within 5 days of the date the Tenant received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on April 06, 2021 and, as such, the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities would not be rendered ineffective.

As the Tenant did not pay rent for April of 2021 when it was due and he did not pay the overdue rent within five days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act* even if the rent was paid on April 14, 2021. I therefore uphold this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and I grant the Landlord an Order of Possession.

I favour the testimony of the Landlord, who stated rent for April was never paid, over the testimony of the Tenant, who stated that he gave the Landlord \$1,000.00, in cash, on April 14, 2021. I therefore find that the Tenant still owes the Landlord \$995.00 in rent for April of 2021.

I favoured the testimony of the Landlord, in part, because I find it unusual to the Tenant would pay rent in cash when he has previously paid rent by e-transfer.

I favoured the testimony of the Landlord, in part, because I find it unlikely that the Tenant would not have sent the Landlord a text message requesting the rent receipt and letter “quashing” these proceedings which the Tenant alleges was promised but not delivered. Given that these parties frequently communicated by text message and these were clearly important documents, I would expect the Tenant to request these documents if they had been promised and not provided.

I favoured the testimony of the Landlord, in part, because of the text message the Landlord sent on April 16, 2021, in which he informed the Tenant he was filing an Application for Dispute Resolution and in which he agreed to continue the tenancy if the rent and the \$100.00 fee for filing the Application for Dispute Resolution was paid. I note this message was sent after the Tenant allegedly paid the rent on April 14, 2021. Given the Landlord’s apparent willingness to continue the tenancy if rent was paid, I find it unlikely that the Landlord would initiate a dispute resolution proceeding if the rent had actually been paid.

I favoured the testimony of the Landlord, in part, because the Tenant did not respond to the text message the Landlord sent on April 16, 2021 until April 22, 2021. In the event the Tenant had actually paid rent on April 14, 2021, I would expect the Tenant to respond immediately to the text message of April 16, 2021 to assert that rent had been paid. Not only was the Tenant’s response delayed, it did not explicitly refute the Landlord’s submission that rent had not yet been paid. The absence of such a response, in my view, supports the Landlord’s submission that rent was not paid for April of 2021.

I find that it was reasonable for the Tenant to understand that the Landlord would seek to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due, pursuant to rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

As the Tenant occupied the rental unit for most of May of 2021 and he has not paid rent, I find that he is obligated to pay rent for May of 2021, in the amount of \$995.00. As I am requiring the Tenant to pay rent for May of 2021, he is entitled to remain in the unit until May 31, 2021.

I find that the Landlord's Application for Dispute Resolution has merit and that he is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, with leave to reapply for any issues not determined in these proceedings.

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 has established a monetary claim, in the amount of \$2,090.00, which includes \$1,990.00 in rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the \$2,090.00. 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 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 27, 2021

Residential Tenancy Branch