



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: OPL, MNRL, OPR**
 TT: CNL-MT, LRE, FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55; and
- A monetary award for unpaid rent, damages and loss pursuant to section 67.

The tenants applied for

- more time to make an application to cancel the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use (the “2 Month Notice”) pursuant to section 66;
- cancellation of the 2 Month Notice pursuant to section 49;
- an order suspending or setting conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

Preliminary Issue – Landlord's Application

The landlord testified that they have not served the tenants with their application for dispute resolution, evidence or their subsequent amendment to the application.

Pursuant to section 59(3) of the *Act* a person who makes an application for dispute resolution must give a copy to the other party.

Section 89 sets out the manners by which an application may be served on another party.

I accept the undisputed evidence of the landlord that they have not served the tenants with their application or subsequent amendment. I find that the landlord's materials were not served on the tenants as required under the *Act* and I accordingly dismiss the landlord's application in its entirety with leave to reapply.

Preliminary Issue – Tenants' Application

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Therefore, as the tenants did not attend the hearing by 9:40 am to make submissions in support of their application, I dismiss the tenants' claim in its entirety without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenants' application, and I find that the landlord's 2 Month Notice, submitted into evidence by the tenants, complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I accept the undisputed evidence of the landlord that they intend in good faith to personally occupy the rental unit. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Conclusion

The landlord's application is dismissed in its entirety with leave to reapply.

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 9, 2021

Residential Tenancy Branch