



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR FF
Tenant: CNR CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 29, 2021. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord was present at the hearing, as was one of the Tenants, B.C. Both parties provided affirmed testimony and confirmed that they understood Rule 6.11.

Landlord's Application

The Landlord uploaded documents to the RTB website 1 day before the hearing and failed to explain why it was uploaded so late. Rule 3.14 states this was supposed to be received by the respondent no later than 14 days before the hearing. I find this late evidence is inadmissible, as it has not been served in accordance with the Rules of Procedure.

The Landlord stated that he had a signed RTB-51 document from one of the Tenants, B.C., which specified that she was okay using email as a means for service. This document was signed April 30, 2021. The Landlord acknowledged that the Tenant told him on July 1, 2021, that her email was no longer functioning, and that she did not have access to that account any longer. The Landlord stated that, despite being told B.C.'s email address was no longer active, he did not believe her and sent his Notice of Hearing and his evidence by email on July 26, 2021. The Tenant, B.C., stated she did not receive any of the documents emailed to her. I acknowledge that parties may opt to receive and be served with documents via email. It appears this was done at the start of the tenancy. However, I find the Landlord should have used another method of service

to serve B.C. given he was subsequently told by her that her email was not functioning. I do not find the Landlord sufficiently served B.C. with his application and evidence.

I note the Landlord stated that he also gave the other two Tenants a separate package containing the Notice of Hearing and his evidence. The Landlord stated he hand delivered these packages (for D.D. and W.N.) on July 26, 2021, to B.C. However, B.C. denies receiving these packages on behalf of the other Tenants. The Landlord did not have any proof of service or any further evidence to show he served those packages to the other Tenants D.D. and W.N. I find the Landlord has failed to sufficiently demonstrate that he served D.D. and W.N. with his application, Notice of Hearing, and evidence.

I find the Landlord's application is dismissed, with leave, as he has not sufficiently demonstrated he served any of the Tenant's in accordance with the Act and the Rules of Procedure. Further, the evidence the Landlord submitted is also inadmissible as he has not sufficiently demonstrated it was served to the Tenants.

Tenant's application

The Landlord confirmed receipt of the Tenants application and Notice of Hearing. However, the Tenant did not provide any documentary evidence. The Tenant also stated she filed an amendment, but she was unclear about what this amendment was for or how the amendment was filed. As stated in the hearing, this was never filed with our office, and given there is no record of any amendment, I decline to allow any such amendment at this proceeding. No amendment was made for this application, and the Tenants' application is limited to the first grounds they selected, to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent.

When a Tenant files an application for dispute resolution regarding a Notice to End Tenancy, they are required to submit a copy of the Notice they are intending to dispute. The Tenant failed to upload copies of either of the Notices to End Tenancy.

I note the following Rule:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- *a detailed calculation of any monetary claim being made;*
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

The Tenant failed to upload the required documents, and had no compelling explanation as to why. I have no admissible copy of either of the Notices to End Tenancy that were to be the subject of the proceedings today. As such, the Tenants' application to cancel both of the Notices to End Tenancy is dismissed without leave.

Given neither party submitted any admissible copies of either of the Notices to End Tenancy from July 2021, they are hereby cancelled, and of no force or effect.

Further, I find it important to note that both parties agree that the Tenant moved out of the rental unit on September 20, 2021. As such, the Tenant no longer requires her application to cancel the Notices to End Tenancy, and the Landlord no longer requires an order of possession.

The only remaining issue was about the unpaid rent. I note that section 55(1.1) of the Act allows the Landlord to obtain a monetary order for unpaid rent when the Tenant's application to cancel a 10 Day Notice is dismissed. However, to do this, I must be satisfied that the 10 Day Notice meets the requirements under section 52 of the Act for form and content. As I have no admissible copy of the 10 Day Notice, I am not satisfied the 10 Day Notice meets the requirements for form and content under section 52 of the Act, and I decline to issue a monetary order pursuant to section 55 (1.1) for unpaid rent in accordance with this 10 Day Notice.

In light of the service issues noted above regarding the Landlord's application, and considering I have no admissible copy of the 10 Day Notice such that I could issue a monetary order under section 55(1.1), the Landlord must file a separate application to pursue any claim for unpaid rent, should he wish to pursue that matter.

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: October 29, 2021

Residential Tenancy Branch