



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR, FFT

For the landlord: OPR, MNRL, FFL

Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under the Notice, pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:32 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Service of the tenants' application

The landlord confirmed she received the tenant's notice of hearing and evidence (the materials) and that she had enough time to review the materials.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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 re-apply.

Accordingly, in the absence of any attendance at this hearing by the applicants, I order the application dismissed without leave to reapply.

However, according to *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession and a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act:

(1) 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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the

circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Service of the landlord's application

The landlord affirmed she served the notice of hearing in person. The landlord does not remember when she served the notice of hearing and if she served one copy for each tenant respondent.

Section 89 of the Act states:

(1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given 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 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].

(2)An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a)by leaving a copy with the tenant;
- (b)by sending a copy by registered mail to the address at which the tenant resides;
- (c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. **Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.**

(emphasis added)

Based on the landlord's vague testimony, I find the landlord did not serve the tenants in accordance with the Act. As noted above, each respondent must receive the notice of hearing and supporting evidence.

As such, I dismiss the landlord's application for an order of possession and a monetary order with leave to reapply.

As the landlord was not successful in her application, I find that the landlord is not entitled to recover the \$100.00 filing fee.

Issues to be Decided

Are the tenants entitled to the cancellation of the Notice?

Is the landlord entitled to an order of possession and a monetary order based on the Notice?

Background and Evidence

While I have turned my mind to the evidence of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the Notice.

The landlord affirmed the tenancy started on November 01, 2020. Monthly rent was \$1,800.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$900.00 was collected and the landlord holds it in trust.

The landlord affirmed in December 2020 the parties verbally agreed that rent will be paid in two monthly payments of \$900.00. The landlord understood that rent was due on the first and fifteenth days of the month, effective December 01, 2020. On March 15, 2021 the parties verbally agreed to reduce the rent to two monthly payments of \$800.00, due on the first and fifteenth days of the month, effective March 15, 2021.

The landlord affirmed the tenants did not pay rent due on May 15, 2021. On June 01, 2021 the landlord served the tenants the Notice in person.

A copy of the June 01, 2021 Notice was submitted into evidence. It indicates the tenants did not pay rent in the amount of "\$800.00 biweekly" due on "1st of the month and on the third week of the month". The effective date is June 11, 2021. A witnessed proof of

service (RTB form 34) indicating the landlord served the Notice in person on June 01, 2021 was submitted into evidence.

The landlord affirmed she refused to accept rent on June 06, 2021 because she wants the tenancy to end. The tenants continue to occupy the rental unit. The tenants' application was submitted on June 08, 2021.

The landlord affirmed the tenants did not pay rent due on May 15, June 01 and 15, July 01 and 15, August 01 and 15, September 01 and 15 and October 01, 2021 in the amount of \$800.00. The landlord is claiming for unpaid rent from May 15 to October 01, 2021 in the total amount of \$8,000.00 and for an order of possession.

Analysis

Based on the landlord's convincing testimony and the proof of service (RTB form 34), I find the landlord served the Notice in person on June 01, 2021 in accordance with section 88(1) of the Act.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Section 46(5) of the Act is mandatory, and I do not have discretion as to its application. I find the tenants did not submit an application to dispute the Notice within the timeframe of section 46(4) of the Act, as the tenants were served the Notice on June 01, 2021 and the tenants' application was submitted on June 08, 2021.

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d)except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy,**

(d.1)for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e)when given by a landlord, be in the approved form.

(emphasis added)

I find the Notice does not comply with section 52(d), as it does not indicate the amount of rent not paid and when it was due. I find that the statements “800.00 biweekly” and “1st of the month and on the third week of the month” are vague, as the landlord did not indicate the exact amount of rent not paid and when it was due.

As such, I find the Notice does not comply with section 52 of the Act, it is not effective and I cannot issue an order of possession or a monetary order.

Conclusion

The Notice dated June 01, 2021 is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

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 08, 2021

Residential Tenancy Branch