



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, FFT**
 CNC, LRE, OLC, FFT

Introduction

This hearing dealt with two applications filed by the tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The first application sought:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The second application sought:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- An order to suspend a landlord’s right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

Preliminary Issue – service of Notice of Dispute Resolution Proceedings

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed.

Regarding the tenant’s application seeking to dispute the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the landlord denies being served with the

tenant's first Notice of Dispute Resolution Proceedings package. The landlord testified that he was sent the notice of hearing package and hearing access code by the Residential Tenancy Branch on September 7th. The landlord was able to upload his evidence using the dispute access codes provided by the Residential Tenancy Branch.

The tenant responded saying that he emailed the Notice of Dispute Resolution Proceedings package to the landlord some time after receiving it from the Residential Tenancy Branch, date unknown. He didn't have the date of service in front of him. After being given the opportunity to review his emails, the tenant said he sent it "within the 2 days", then told me that on July 11th he sent it by email to the landlord.

Regarding the tenant's second application to dispute the landlord's One Month Notice to End Tenancy for Cause, the landlord testified he was not served with a copy of the tenant's Notice of Dispute Resolution Proceedings package either. He was unaware that the tenant had ever filed an application. The tenant responded that he recalls that the notice would have been emailed to the landlord a couple of days after it was provided to him by the Residential Tenancy Branch. After I pointed out to the tenant that the Residential Tenancy Branch provided the notice to him by email on October 6th, the tenant testified it was emailed to the landlord on October 8th. No proof of service documents were provided as evidence by the tenant for either of the two Notices of Dispute Resolution Proceedings.

The landlord denies that email was ever provided as a means of serving documents. The tenant countered the statement, saying there is a history of email communication between the parties. In evidence before me, no documents with clear indication that email specifically for the purposes of being served documents were provided.

My ruling on whether the Notice of Dispute Resolution Proceedings packages were sufficiently served will be determined in the analysis portion of this decision. The parties were both given the opportunity to provide their arguments regarding the tenant's applications.

Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's one month notice to end tenancy for cause and to cancel the landlord's 10 day notice to end tenancy for unpaid rent was unrelated to the tenants' other issues and dismissed the tenant's other issues with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Did the tenant properly serve the landlord with the Notices of Dispute Resolution Proceedings?

Should the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities or One Month Notice to End Tenancy for Cause be upheld or cancelled?

Can the tenant recover the filing fees?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is a single family house owned by the landlord. The landlord had one previous tenant for approximately 8 years and this tenant was his second.

The landlord approached the tenant to do some painting work in the house and the tenant took the job. The tenant asked the landlord whether he would be renting it out and the landlord said he would. The tenant asked whether he would rent the unit to him and the landlord agreed.

The parties entered into a tenancy agreement whereby the landlord would not seek a security deposit and would not seek the first month's rent in lieu of the tenant painting the rental unit. A copy of the tenancy agreement was provided as evidence. The fixed one year tenancy began on February 1, 2020 and became month to month on February 1, 2021. The tenancy agreement states the following: "**Payment of Rent:** *The tenant will pay the rent of \$1,200.00 each month to the landlord on the first day of the rental period which falls on the (due date, e.g. 1st, 2nd, 3rd, 31st) [] Day of each month subject to rent increases given in accordance with the RTA.*"

The landlord testified that he neglected to put a "1st" in the blank spot of the tenancy agreement to indicate rent was due on the first day of each month. The landlord argues that he made it clear that rent was due on the first, pointing to an email sent on January 21, 2020, saying "*rent to commence on March 01, 2020. Possession on February 01, 2020 but Feb rent waived for labour and materials for painting*". The tenant responded by saying "*Everything looks in order...*"

Since the tenant moved in, it has been “laborious” to get the tenant to pay his rent. The tenant repeatedly has excuses for not paying on time. In mid-June, the tenant paid his last partial rent payment. By July 1st, the tenant did not pay July rent and was \$700.00 in arrears for June. On July 2nd, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities indicating the tenant was \$1,900.00 in arrears. Since serving the tenant with notice, the tenant has not made any payments towards arrears or ongoing rent. The landlord seeks compensation from the tenant for rent up until the date of the hearing.

The tenant gave the following testimony. There were two stipulations for him to enter into the tenancy with the landlord. The first was that the landlord lower the rent from \$1,500.00 to \$1,200.00 and the second was that the landlord accept rent payments from the tenant on dates that coincide with his paydays. The tenant acknowledged he is self employed and has no set paydays, so the agreement was that he pays the landlord whenever he has money. The tenant acknowledges this “agreement” was verbal and nothing was committed to paper.

The tenant submits that after receiving the notice to end tenancy, he tried to pay the landlord the outstanding arrears of \$700.00 on July 3rd but the landlord refused. The tenant acknowledges he didn’t have enough money to also pay rent for July 1st, however according to their verbal agreement, rent for July wasn’t actually due on the 1st of the month.

The tenant acknowledges he never attempted to pay rent for the subsequent months.

Analysis

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the 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.

Residential Tenancy Policy Guideline PG-12 [Service Provisions] states that there are only four methods of service for an Application for Dispute Resolution and that 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.

The four methods are:

1. Personal service
2. Registered mail
3. Email service and
4. with an order for substituted service.

Section 43(1) of the Residential Tenancy Regulation states:

43 Other means of giving or serving documents

(1) For the purposes of section 88 (j) [*how to give or serve documents generally*] of the *Act*, the documents described in section 88 of the *Act* may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

The tenant submits that he served the Notice of Dispute Resolution Proceedings (which includes the Application for Dispute Resolution) upon the landlord by email. The tenant did not supply any documentary evidence to prove that email was “an address for service” provided by the landlord. Second, the tenant testified to me that the day he emailed the landlord with the Notice of Dispute Resolution Proceedings regarding the dispute to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was July 11th.

First, I find that the landlord did not explicitly provide an email as an address for service of documents as required by section 43 of the Regulations. While I note that the parties may have communicated with one another during the course of the tenancy by email, I do not find that the landlord or the tenant ever acknowledged that email would be an agreed forum to serve legal documents. Second, the tenant was unable to provide me with a plausible date of service of the Application for Dispute Resolution. No proof of service document was provided and the tenant’s testimony regarding service by email lacks credibility. When pressed for a date of service, the tenant responded that he was sure he emailed the Notice of Dispute Resolution Proceedings to the landlord on July 11th, however that would pre-date the date it was created and sent to the tenant by the Residential Tenancy Branch on July 20th. On a balance of probabilities, I do not accept that the Notice of Dispute Resolution Proceedings, created on July 20th was ever served upon the landlord. In accordance with rule 3.5, I must dismiss the application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities without leave to reapply.

Regarding the second Notice of Dispute Resolution Proceedings created on October 6th, I have the same reservations regarding the landlord and tenant agreeing that email would be an accepted as an address for service of documents. The testimony of the tenant regarding service by email on October 8th lacks credibility as the tenant didn’t appear to have any clear recollection of serving it, other than saying it was done two

days after the day I told him it was emailed to him by the Residential Tenancy Branch. The landlord's lack of any evidence uploaded to the tenant's file seeking to dispute a One Month Notice to End Tenancy for Cause is consistent with the landlord being unaware of the dispute being filed. I find the landlord was not served with the Notice of Dispute Resolution Proceedings and I dismiss the tenant's application to cancel the landlord's One Month Notice to End Tenancy for Cause without leave to reapply.

Although I have dismissed the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for failure to serve the landlord with the Notice of Dispute Resolution Proceedings; I also dismiss it based on the following findings:

While section 6.6 of the rules of procedure state it is the landlord's onus to prove on a balance of probabilities that the facts occurred as claimed when a tenant applies to cancel a notice to end tenancy, I find the landlord has successfully done so.

I find that the landlord neglected to put a 1st in the box where he wanted to indicate rent was due on the first of the month. I find that, on a balance of probabilities, that this landlord or any other landlord would never agree to allow a tenant to pay rent whenever he has the funds, without an agreed to due date. It would defy common sense for any reasonable person to allow another person to rent an accommodation without knowing when that person was going to pay for it. While it confers great benefit to the tenant to not worry about paying rent "on time" it provides absolutely zero benefit to the landlord who may be required to pay a mortgage on a timely schedule or have other obligations contingent upon regular rent payments. I find the tenant's argument that the space in part 3 of the tenancy agreement was deliberately left blank lacks any reasonable credibility. I find that rent was due on the first day of the month.

Section 26 of the *Act* states:

26 Rules about payment and non-payment of rent

(1)A tenant must pay rent when it is due under the tenancy agreement, whether or not 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.

I find that the tenant failed to pay rent when it was due, on the first day of the month and I uphold the landlord's notice to end tenancy for unpaid rent or utilities.

Section 55 of the *Act* states:

55 Order of possession for the landlord

(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.

I have examined the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and find it complies with the form and content requirements as stated in section 52. As the effective date stated in the notice to end tenancy has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

I accept the landlord's testimony that the tenant only paid \$500.00 of the \$1,200 rent due for June and I award the landlord \$500.00 in arrears. The tenant testified that he has not paid rent for the months of July, August, September, October or November. Pursuant to section 55(4), I find the landlord is entitled to compensation for each of those months, with November's rent being pro-rated to the date of this decision: [\$1,200.00 / 30 x 3 (days) = \$120.00].

Item	Amount
June arrears	\$500.00
July rent	\$1,200.00
August rent	\$1,200.00
September rent	\$1,200.00
October rent	\$1,200.00
November rent (pro-rated)	\$120.00
Total	\$5,420.00

The tenant's applications to cancel the notices to end tenancy were unsuccessful. The filing fees will not be recovered.

Conclusion

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

I issue a monetary order in the landlord's favour in the amount of **\$5,420.00**. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 03, 2021

Residential Tenancy Branch