



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62; and
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62.

The respondent (landlord) called into this teleconference at the date and time set for the hearing of this matter. Although I waited until 11:16 A.M. to enable the applicant (tenant) to connect with this teleconference hearing scheduled for 11:00 A.M., the applicant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only persons who had called into this teleconference.

At the outset of the hearing the attending party affirmed he 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."

The landlord confirmed receipt of the notice of hearing by regular mail on July 28 or 29, 2021. Based on the landlord's testimony, I find the tenant sufficiently served the notice of hearing in accordance with section 71(2)(c) of the Act.

The landlord submitted response evidence to the Residential Tenancy Branch on the date of the hearing and did not serve it to the tenant.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The landlord's response evidence is excluded, per Rule of Procedure 3.15.

I proceeded with the hearing in the absence of the tenant, per Rule of Procedure 7.3.

Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing the landlord corrected the spelling of his first name.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Preliminary Issue – Tenant's application dismissed

Rules of Procedure 7.1 and 7.3 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 applicant I order the application for an order for the landlord to comply with the Act and for an order requiring the landlord to provide services dismissed without leave to reapply.

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 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.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an order of possession based on the Notice and a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to all the testimony of the landlord, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim 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 April 01, 2019. Monthly rent is \$675.00, due on the first day of the month. The tenant continues to occupy the rental unit. This application was submitted on July 09, 2021.

The landlord served the Notice on July 02, 2021 by attaching it to the tenant's front door. The Notice was issued for the unpaid rent of June and July 2021 in the total amount of \$1,350.00. The landlord received \$400.00 on August 06 and \$950.00 on August 10, 2021. The landlord stated the tenant paid rent in August, September, October and November 2021.

The landlord is seeking for an order of possession.

Analysis

Based on the undisputed landlord's testimony, I find the landlord served the Notice on July 02, 2021, in accordance with section 88 (g) of the Act. The tenant is deemed to have received the Notice on July 05, 2021, per section 90 (c) of the Act. I find that the tenant's application was submitted before the five-day deadline to dispute the Notice, in accordance with Section 46(4)(b) of the Act.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Per Rule of Procedure 6.6, the landlord has the onus to substantiate the Notice.

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.

As a copy of the Notice was not accepted into evidence, I can not confirm if the Notice is in accordance with section 52 of the Act. Thus, I find the landlord failed to substantiate the Notice.

Conclusion

The Notice served on July 02, 2021 is cancelled and of no force or effect. This tenancy will continue 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: November 16, 2021

Residential Tenancy Branch