



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT, MNDCT, PSF, CNL-4M

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 the Two Month Notice to End Tenancy for Landlord's Use under section 49;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation), and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, under section 49; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was assisted by advocate AW. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand 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."

At the outset of the hearing the tenant affirmed she moved out of the rental unit on November 06, 2021. The landlord affirmed the tenant left the rental on November 21, 2021.

The application for cancellation of the Notices, an order for the landlord to comply with the Act, and to provide service and facilities are moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for cancellation of the Notices, an order for the landlord to comply with the Act, and to provide service and facilities.

The landlord confirmed receipt of the notice of hearing on September 15, 2021.

The notice of hearing states:

I want compensation for my monetary loss or other money owed
\$100.00
Applicant's dispute description
see app

The tenant did not serve the application form (RTB 12T) because she thought the Residential Tenancy Branch would serve the application form to the landlord. The landlord affirmed he does not know the details of the monetary claim.

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package
The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, **which includes the Application for Dispute Resolution;**
b) the Respondent Instructions for Dispute Resolution;
c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

(emphasis added)

Based on the testimony offered by both parties, I find the tenant did not serve the notice of hearing package in accordance with Rule of Procedure 3.1. The hearing cannot proceed fairly when the respondent has not been notified of the hearing in accordance with Rule of Procedure 3.1.

Conclusion

I dismiss the tenant's application for a monetary order with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

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: January 17, 2022

Residential Tenancy Branch