



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FirstService Residential BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

CNR, FFT

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the "Act").

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he sent the Notice of Dispute Resolution Proceedings to the

resident building manager and the property manager via email on September 30, 2021. A copy of the email and evidence of multiple correspondences between the parties was provided as evidence by the tenant. I find that the primary method of communication between the landlord and the tenant was via email, and I am satisfied the tenant sufficiently served the landlord with his Notice of Dispute Resolution Proceedings package on October 3, 2021, three days after it was sent by email pursuant to sections 43(2) and 44 of the Residential Tenancy Regulations.

The tenant testified that he was unaware that the landlords had filed an application for dispute resolution against him. The tenant testified that he was not served with the landlord's Notice of Dispute Resolution Proceedings or application for dispute resolution.

Issue(s) to be Decided

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

Can the tenant recover the filing fee?

Background and Evidence

The landlord did not attend this hearing to present any evidence. The tenant gave the following undisputed evidence.

A copy of the tenancy agreement was provided. This fixed term tenancy began on May 1, 2020 and became month to month at the end of the first year. Rent was set at \$1,500.00 per month, payable on the first day of each month.

The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on September 15, 2021 when it was posted to his door. The notice states that the tenant failed to pay rent in the amount of \$3,125.00 that was due on September 1, 2021.

The landlord did not attend this hearing to present any evidence or provide testimony regarding the allegation of not paying rent. The tenant testified that payment for rent was made for both August and September and points out that in the email exchanges with the landlord, the landlord acknowledges on September 13th that *"ClickPay reporting system is malfunctioning, so we need proof of payments for your August and September rent payments."*

During the hearing, the tenant testified that he is looking at his bank account, and his bank records show that there have been no NSF charges accruing in the months of August and September and that the rent payments for those months “went through” without incident.

The tenant testified that he has also paid his rent for October and November of 2021 but acknowledges he has not paid rent for December, 2021 or January 2022.

Analysis

Based on the undisputed testimony of the tenant, I find he was served with the landlord’s notice to end tenancy on September 20, 2021, five days after it was posted to his door, pursuant to sections 88 and 90 of the Act. The tenant applied to cancel the notice within five days as required by section 46(4).

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause pursuant to rule 6.6 of the Residential Tenancy Branch Rules of Procedure. The landlord must show, on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. In the matter at hand, the onus is on the landlord to show the tenant did not pay rent for August and September, 2021.

The landlord did not attend this hearing to present any evidence or provide any testimony regarding their application. The tenant provided undisputed testimony to show he paid rent for the months in question. I find that the landlord has not established the validity of their grounds for ending this tenancy and I cancel the notice to end tenancy issued on September 15, 2021. The tenancy will continue until ended in accordance with the Act.

The Residential Tenancy Branch Rules of Procedure state:

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The tenant provided undisputed testimony that the landlord did not serve him with their Notice of Dispute Resolution Proceedings (the "notice"). As such, I find the landlord failed to serve the tenant with the notice as required under section 89 of the Act. Further, the landlord did not attend this hearing to present evidence or provide testimony regarding their claim. Accordingly, for failing to serve the tenant with the Notice of Dispute Resolution Proceedings and in the absence of the presentation of any evidence or submissions from the landlord for this hearing, I order the landlord's application seeking a monetary order for unpaid rent be dismissed without leave to reapply.

The tenant was successful in his application and is entitled to recover the filing fee from the landlord. Pursuant to section 72 of the Act, the tenant may reduce a single payment of rent owing to the landlord by \$100.00 in full satisfaction of the recovery of the filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.

The notice to end tenancy is cancelled and of no further force or effect. The tenancy will 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: February 01, 2022

Residential Tenancy Branch