



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC
 MNRL, MNDCL, MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant (the Tenant's Application) on September 21, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);

This hearing also dealt with a Cross-Application for Dispute Resolution filed by the Landlords (the Landlords' Application) on October 20, 2021, under the *Act*, seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Compensation for damage caused by the tenant, their pet, or their guests to the unit, site, or property, and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on February 3, 2022, and was attended by the Landlord N.S.M. who provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in

limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over myself and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Notice of Dispute Resolution Proceeding for the Tenant's Application and the Landlords' Application states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the Notice of Dispute Resolution Proceeding were correct and I note that the Landlord was able to attend the hearing promptly using the information contained in the Notice of Dispute Resolution Proceeding. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that 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 reapply. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled. Although the line remained open for 41 minutes, neither the Tenant nor an agent acting on their behalf appeared to provide evidence or testimony for my consideration.

The Landlord stated that they had not received a copy of the Tenant's Application or a Notice of Hearing from the Tenant. As the Tenant did not attend the hearing or submit any documentary evidence for consideration on either file, I therefore accepted the Landlord's affirmed and undisputed testimony that they were not served with a copy of the Tenant's Application. Section 59(3) of the *Act* states that except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the 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 Branch; and
- d) any other evidence submitted to the 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].

In reading section 59(3) of the *Act*, I note that the word “must” is used in relation to service of the Application for Dispute Resolution on the respondent(s) by the Applicant(s). The word “must” denotes that service within the three day period, or within a different period specified by the director, is mandatory.

As I am satisfied that the Tenant failed to comply with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure, I therefore dismiss the Tenant’s Application without leave to reapply, as the Landlord stated that the tenancy ended on either October 13, 2021, or October 14, 2021, when the Tenant vacated the rental unit. As I am satisfied that the tenancy has already ended and that the Landlords have possession of the rental unit, I have therefore not assessed whether the Landlords are entitled to an Order of Possession under section 55(1) of the *Act*. As a result, and because a copy of the 10 Day Notice was not submitted by either party for my consideration, I find that I cannot grant the Landlord unpaid rent pursuant to section 55(1.1) of the *Act*, specifically as a result of dismissing the Tenant’s Application seeking cancellation of the 10 Day Notice. Having made these findings, I will now turn to the matter of the Landlords’ Application.

At the hearing the Landlord had difficulty recalling information regarding service of the Notice of Dispute Resolution Proceeding Package for their own Application on the Tenant. Although the Landlord stated that it was first served on the Tenant by posting a copy to the door of the rental unit, they could not provide me with the date this occurred and did not submit any corroboratory documentary evidence or call any witnesses. As a result, I was unable to confirm service by this manner. Further to this, I question the authenticity of this testimony, as the Landlord states that the Tenant vacated the rental unit on either October 13, 2021, or October 14, 2021, and Residential Tenancy Branch records show that the Landlords did not file their Application until October 20, 2021, and that the Notice of Dispute Resolution Proceeding Package for their Application was not made available to them until October 22, 2021.

I asked the Landlord if they had served it in any other manner and they stated yes, by registered mail. The Landlord again had difficulty providing me with details about this

service, as they could not provide me with the date the registered mail was sent and first provided me with three invalid numbers before providing me with a registered mail tracking number recognized by the online Canada Post tracking system, which I have recorded on the cover page of this decision.

Canada Post shows that the registered mail was sent on December 7, 2021, that a notice card was left on December 10, 2021, and that final notice was left on January 17, 2021. No delivery information is available which leads me to conclude that the registered mail was not delivered or picked up. I asked the Landlord where they sent the registered mail, and the Landlord provided me with the address used, which I have also recorded on the cover page of this decision. The Landlord stated that as the Tenant did not provide them with a forwarding address, they simply followed the moving truck and used that address to send the registered mail. When I asked them what date this occurred, they could not provide me with a date.

Although I accept that the Landlords sent the Notice of Dispute Resolution Proceeding Package on December 7, 2021, by registered mail, rule 3.1 of the Rules of Procedure specifies that a copy of the Application must be served on the respondent(s) by the Applicant(s) within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Branch. Records at the Residential Tenancy Branch indicate that the Notice of Dispute Resolution Proceeding Package was made available to the Landlords on October 22, 2021. I therefore find that the Landlords were required by the Legislation to serve or send the Notice of Dispute Resolution Proceeding to the Tenant by October 25, 2021, which they did not do. As stated above, I find that the wording set out in section 59(3) of the *Act* makes it clear that service within the three day period set out under rule 3.1 of the Rules of Procedure, is mandatory. Further to this, I have concerns regarding whether the address used for the Tenant qualifies as a valid address for service for the Tenant under the *Act*. As a result, I dismiss the Landlords' Application seeking recovery of unpaid rent, compensation for monetary loss or other money owed, and compensation for damage caused by the tenant, their pet, or their guests to the unit, site, or property, with leave to reapply. Their claim for recovery of the filing fee for this Application is dismissed without leave to reapply, as I decline to grant them recovery of the filing fee as they were not successful in their Application.

At the request of the Landlord, a copy of the decision will be mailed to them at the address provided in their Application.

Conclusion

The Tenant's Application is dismissed without leave to reapply. No Order of Possession has been considered or granted, as the Landlord states that the Tenant vacated the rental unit in October of 2021, and no copy of either the One Month Notice or the 10 Day Notice was submitted for my consideration.

The Landlords' Application seeking recovery of unpaid rent, compensation for monetary loss or other money owed, and compensation for damage caused by the tenant, their pet, or their guests to the unit, site, or property, is dismissed with leave to reapply. The claim for recovery of the filing fee for this Application is dismissed without leave to reapply.

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 16, 2022

Residential Tenancy Branch