



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR-MT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that he was not recording this dispute resolution hearing.

The Landlord was not at the hearing to give evidence of service of the 10 Day Notice. The 10 Day Notice says it was served on the Tenant 1) in person, 2) by leaving a copy in a mailbox; and 3) by attaching a copy to the door or other conspicuous place. The Tenant testified that he found the 10 Day Notice in a box full of vacuum parts beside his doorstep on November 8, 2021.

Pursuant to Section 88 of the Act, the 10 Day Notice, that is required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) *by leaving a copy with the person;*
- (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) *by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) *if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) *by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) *by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) *by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) *by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) *as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) *by any other means of service provided for in the regulations.*

As the Landlord did not serve the Tenant in one of the above ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 (CanLII) at para. 65.

I find that service of the 10 Day Notice was not effected and it would be administratively unfair to proceed on the Landlord's notice against the Tenant. I cancel the Landlord's 10 Day Notice because of improper service. The tenancy shall continue until ended in accordance with the Act.

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 18, 2021 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was served with the NoDRP package five days after mailing them, on November 23, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's 10 Day Notice?
2. Is the Tenant entitled to more time to dispute the notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This oral tenancy began in 2020. Monthly rent is \$450.00 payable on the first day of each month. The Tenant is still residing in the rental unit.

The reasons in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$550.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was December 31, 2021.

The Tenant applied for more time to apply for dispute resolution, but he applied in time for dispute resolution on November 16, 2021.

The Tenant seeks to cancel the Landlord's 10 Day Notice.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

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.*

I previously found that the 10 Day Notice is canceled due to improper service. The Landlord also did not attend this hearing to provide evidence why this tenancy needs to end. I find on a balance of probabilities that the Landlord has not met their burden and their 10 Day Notice is canceled. The Tenant's application for dispute resolution is granted and the tenancy shall continue until ended in accordance with the Act.

Conclusion

The Tenant's dispute resolution application to cancel the Landlord's 10 Day Notice is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 11, 2022

Residential Tenancy Branch