



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL, MNDCL

Introduction

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

- an order of possession pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$500.00 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:21 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 landlord and I were the only ones who had called into this teleconference.

The landlord testified he/she served that the tenant personally with the notice of dispute resolution form and evidence on January 14, 2022, at 1:19 p.m. The landlord submitted photos date and time stamped to confirm delivery of an envelope to the tenant. I find that the tenant was served with the initial package on January 14, 2022, in accordance with section 88 and 89 of the Act. The landlord, however, initiated several amendments to his application on January 20, 2022. The landlord provided insufficient evidence showing that the tenant was served with the amendments.

At the outset, I advised the landlord of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that they were not recording the hearing. I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

The parties were advised that pursuant to rule 6.11 of the Residential Tenancy Branch Rules of Procedure (the "**Rules of Procedure**"), persons are prohibited from recording dispute resolution hearings, except as allowed by rule 6.12. As the landlord had neither requested nor been granted authorization to hire an accredited Court reporter as allowable under rule 6.12, I confirmed with the landlord that he was not recording the hearing. The landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary Issue #1: Landlord's Application

The landlord applied for monetary relief in the amount of \$500.00 from the tenant as compensation for damage. The landlord advised that he has not inspected the property.

Pursuant to rule 2.3 of the Rules, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are general scheduled for one-hour and rule 2.3 is intended to ensure that we can address disputes in a timely and efficient manner.

Upon review of the landlord's application, I find that the primary issue is whether the tenancy will continue or end pursuant to the Two (2) Notice to end tenancy that is subject to the application.

Accordingly, pursuant to rule 2.3 of the Rules, I dismiss the landlord's following claims without leave to reapply:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$500.00 pursuant to section 67

The hearing proceeded on the issue tied to the notice to end tenancy signed October 29, 2021.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) recover the filing fee?

If the landlord's application fails, is the tenant entitled to:

- 1) an order cancelling the Notice;

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a "written" month to month tenancy agreement starting in 2015. The "tenancy agreement" provided no information about rent or any security deposits provided. The landlord provided no additional information.

I asked if the tenant was still residing on the premises. The landlord said he "thought so". He did not know for sure. When questioned about the Notice of Dispute Resolution the landlord restated that he served the tenant with the Notice of Dispute Resolution on January 14, 2022 and provided photos that are date stamped January 14, 2022.

Since the tenant did not attend the hearing, I asked the landlord about the service of the Two Month Notice. He stated he served it in person on October 29, 2021. I asked if he took photos when he delivered the documents, similar to the date and time stamped photos taken when he delivered the Notice of Dispute Resolution. He responded that he did not take photos as he didn't think it necessary. I asked if there was a witness? The landlord said his wife was present and he could ask her to confirm delivery.

This was the extent of the information the landlord was willing to provide. He told me he did not have to respond to my questions. I asked if there was any additional information, he thought I might need to write a decision. The landlord stated, "No." The hearing concluded at 11:20 a.m.

Analysis

The landlord testified that the Notice of Dispute Resolution was served January 14, 2022 and provided date stamped photos of the landlord handing an envelope to the tenant. The landlord made several amendments to his initial application on January 20, 2022. The landlord provided insufficient evidence confirming that the tenant was served with the subsequent amendments. Like the hearing package, the amendment form must be served in accordance with Section 89 of the *Act*. The amendment and accompanying evidence must be received by both the respondent and the Residential Tenancy Branch no later than 14 days before the hearing date.

In an October 28, 2021, dispute resolution hearing, the tenant filed an application disputing the Two Month Notice. The tenant's application was granted on the basis that the Notice did not comply with s. 52 of the *Act*.

On October 29, 2021, the landlord testified that he issued and delivered the Two Month Notice to the tenant but provided no evidence that the Notice was delivered. The tenant did not file an application for dispute resolution within 15 days as required under s. 49.

When asked about delivery of the Two Month Notice, the landlord stated that he did not think he had to "prove" he delivered the Two Month Notice. He took no photos, filled out no forms, and the witness to the delivery of the Notice was his wife. When a respondent does not appear at the dispute resolution hearing, the onus is on the applicant to prove, on a balance of probabilities that it is more likely than not the respondent was served with the Notice.

I am guided by Policy Guideline #12 (PG #12): "Service Provisions" and specifically "Proof of Service". If a Notice is served in person, proof of service should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents. The landlord provided insufficient evidence in this regard.

PG #12 goes on to state, "Failure to prove service may result in the matter being dismissed, with or without leave to reapply."

I note the landlord used the Proof of Service form, RTB #34, to show that the tenant was served with the initial Notice of Dispute Resolution proceedings¹ on January 14, 2022. The Proof of

¹ <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb34.pdf>

Service form provides a list of documents the form can be used as proof of service including the Two Months' Notice to End Tenancy.

Although the tenant did not file for dispute resolution within the 15 days as required under s. 49, I am unable conclude on a balance of probabilities that the tenant was served with either the amendments to the application made by the landlord on January 20, 2022 or that the landlord served the tenant the Two Months' Notice on October 29, 2021. I therefore find that the tenant is not conclusively presumed to have accepted the end of tenancy.

In conclusion, I find the landlord failed to show the tenant was served with the notice of amendments to his application for dispute resolution or that he served the tenant with the Two Month Notice.

The landlord's application for an order of possession is dismissed, without leave to reapply. Since the landlord's application was unsuccessful, the landlord is not entitled to reimbursement of the \$100.00 filing fee.

Conclusion

The landlord's application for an order of possession 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: March 1, 2022

Residential Tenancy Branch