



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex parte* application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:55 P.M. to enable the tenant's representative to call into this teleconference hearing scheduled for 1:30 P.M. The tenant's representative did not attend the hearing. The landlord, represented by property manager LB (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.

At the outset of the hearing the attending party affirmed he understands 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."

I accepted the landlord's that the tenant was served with the notice of dispute resolution direct request proceeding by registered mail on November 19, 2021, in accordance with section 89(2)(b) of the Act. The notice of dispute resolution direct request proceeding

was mailed to the tenant at the rental unit's address. The tracking number is recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the notice of dispute resolution direct request proceeding on November 24, 2021, in accordance with section 90 (a) of the Act.

The landlord affirmed he learned in the first week of December 2021 that the tenant died on November 26, 2021. The landlord holds in trust the \$360.00 security deposit (the deposit).

On December 30, 2021 an interim decision was issued and this hearing was scheduled.

The landlord served the tenant the December 30, 2021 notice of hearing by registered mail on January 02, 2022. The package was mailed to the tenant at the rental unit's address. The tracking number is recorded on the cover of this decision.

The landlord stated he does not know who is the representative of the tenant's estate or the address for service of the tenant's estate.

The landlord inspected the rental unit on January 27, 2022 and confirmed it was vacant. The landlord changed the locks and obtained possession of the rental unit on January 27, 2022.

Section 89 of the Act states:

- (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;
 - (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 43 states:

D. Naming an estate of a person who has died

If the deceased is a respondent to an application, **the personal representative must be named and served.**

If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

(emphasis added)

Residential Tenancy Branch Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

(emphasis added)

The application for an order of possession is moot since the tenancy has ended and the landlord obtained possession of the rental unit.

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 an order of possession.

I accept the landlord's testimony that he learned in the first week of December 2021 that the tenant died on November 26, 2021 and that the landlord does not know the representative or the address for service of the tenant's estate.

The tenant's estate must be served the notice of hearing. The landlord served the notice of hearing to the tenant's address knowing that the tenant was deceased. I find the landlord did not serve the notice of hearing to the tenant's estate.

As such, I dismiss the landlord's application for a monetary order with leave to reapply.

The landlord obtained possession after he served the notice of dispute resolution direct request proceeding. Thus, I authorize the landlord to recover the \$100.00 filing fee.

Conclusion

I dismiss the landlord's application for a monetary order with leave to reapply.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the deposit to recover the filing fee.

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: April 05, 2022

Residential Tenancy Branch