



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, LRE, OLC, FFT

Introduction

In this application for dispute resolution, the Tenants applied on January 6, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 1, 2022;
- compensation for monetary loss or other money owed;
- an order to suspend or set conditions on the Landlords' right to enter the rental unit or site;
- an order for the Landlords to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified he served his Notice of Dispute Resolution Proceeding (NDRP) on the Landlords by regular mail on January 18, 2022. Counsel for the Landlords confirmed that the NDRP was received; however, the Landlords received only pages 1, 3, and 5 of the document. Despite that, counsel confirmed that the Landlords were prepared to proceed. Based on the affirmed testimony of the Tenant and counsel, I find the Tenant sufficiently served the NDRP on the Landlords on January 18, 2022, in accordance with section 71 of the Act.

As the Tenant testified he did not serve his evidence on the Landlords, I advised those present I would not consider it in my decision.

Regarding the service of the Landlords' responsive evidence, Counsel submitted that the Landlord messaged the Tenant, and was told by the Tenant on March 22, 2022 that the Tenant no longer stays at the rental unit. Counsel submitted that the Tenant sent the Landlord a text, asking the Landlord to leave the responsive evidence on the balcony of the rental unit, which the Landlord did on March 23, 2022. The Tenant testified that the events occurred as described by counsel, but the Tenant did not receive the Landlords' responsive evidence.

As the Landlord served their responsive evidence in the manner requested by the Tenant, I advised those present I would consider the Landlords' evidence in my decision.

Preliminary Matters

Request to Adjourn

At the beginning of the hearing, the Tenant asked for an adjournment, explaining that he was not prepared for the hearing. When I asked him for further details, the Tenant explained that he sought more time in order to save money to hire a lawyer, and so be well-represented.

After considering the Tenant's request, I informed him that as he had since January 6, 2022 to prepare, I would be continuing with the hearing.

Unit Vacated

The Tenant testified he vacated the rental unit in March 2022, but still holds the keys. Counsel submitted that the Landlords still seek an order of possession.

Request to Cross Files

The parties have an upcoming hearing, the number of which is noted on the cover page of this decision. Counsel requested that I additionally hear on the Landlords' claims from the upcoming hearing, which I declined.

Dismissing Claims

As the Tenant has vacated the unit, I dismiss his claims for an order to suspend or set conditions on the Landlords' right to enter the rental unit or site, and an order for the Landlord to comply with the Act, regulation, and/or the tenancy agreement, as these claims pertain to a unit occupied by a tenant.

The Residential Tenancy Branch Rule of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the 10 Day Notice, I dismiss, with leave to reapply, the Tenant's claim for compensation for monetary loss or other money owed.

Premature 10 Day Notice

The Tenant and counsel for the Landlords confirmed that rent was \$5,000.00, and was due on the first of the month.

The 10 Day Notice served on the Tenant is dated January 1, 2022, and states that the tenancy is ending because the Tenant has failed to pay rent in the amount of \$5,000.00 due on January 1, 2022. As tenants have until midnight on the day rent is due to pay the rent, the Notice was premature and is therefore without force.

Therefore, the 10 Day Notice is cancelled.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in his application, I order the Landlords to pay the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

I advised the Tenant he should return the keys to the rental unit to the Landlords.

Conclusion

The Tenant's application is granted; the 10 Day Notice is cancelled.

The Tenant is granted a monetary order in the amount of \$100.00 in recovery of the filing fee. The monetary order must be served on the Landlords. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 12, 2022

Residential Tenancy Branch