



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR-MT, LRE, OLC
For the landlord: OPR-DR, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62.

The landlord's application pursuant to the Act is for:

- an order of possession under 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 9:47 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Landlord Remax Little Oak Realty, represented by property manager DL (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.”

Preliminary Issue – Service of the tenant’s application

The landlord confirmed receipt of the notice of hearing and a copy of the Notice (the tenant’s materials) via registered mail in January 2022.

Based on the landlord’s convincing testimony, I find the tenant served the tenant’s materials in accordance with section 89(1) of the Act.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 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.

Accordingly, in the absence of any attendance at this hearing by the applicant tenant, I order the tenant’s application dismissed without leave to reapply.

I note that sections 55(1) and 55(1.1) of the Act require that when a tenant submits an application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession and a monetary order for unpaid rent if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Relying on *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy when a tenant does not appear to present their application to cancel the notice:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

The landlord affirmed that he is only seeking an order of possession.

Preliminary Issue – Service of the landlord’s application

The landlord stated he served the notice of hearing and evidence (the landlord’s materials) by registered mail. The landlord could not provide the tracking number and does not remember when he served the landlord’s materials.

Residential Tenancy Branch Policy Guideline 12 states:

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.

The testimony offered by the landlord was vague. Thus, I find the landlord failed to prove, on a balance of probabilities, that he served the landlord’s materials.

I dismiss the landlord’s application with leave to reapply.

Preliminary Issue – Correction of the Landlord’s Name

The tenant’s application lists respondent landlord DL. The landlord’s application lists applicant landlord Remax Little Oak Realty. The landlord testified the landlord is Remax Little Oak Realty, represented by property manager DL.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant’s application.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord’s claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord’s obligation to present the evidence to substantiate his claim.

The landlord said the tenancy started on January 15, 2018. Monthly rent was \$718.20 until December 2021 and \$728.97 since January 2022, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$350.00 and currently holds it in trust.

The landlord served the Notice on December 17, 2021 at 12:40 by attaching it to the tenant's door.

A copy of the Notice was submitted into evidence. It is dated December 17, 2021 for unpaid rent due on December 01, 2021 in the amount of \$1,447.52. The Notice is signed by the landlord, gives the address of the rental unit, states the grounds to end the tenancy and it is in the approved form. The effective date is December 27, 2021.

The landlord affirmed he served the Notice with a ledger indicating the tenant did not pay the balance of October 2021 rent in the amount of \$11.12, November and December 2021 rent in the monthly amount of \$718.20.

The tenant continues to occupy the rental unit and has not paid rent.

Analysis

Based on the undisputed and convincing landlord's testimony, I find the tenant was served the Notice on December 17, 2021, in accordance with section 88 (g) of the Act. The tenant is deemed to have received the Notice on December 20, 2021, per section 90 (c) of the Act.

Based on the undisputed and convincing landlord's testimony, I find the tenant was obligated to pay monthly rent in the amount of \$718.20 until December 2021 and is obligated to pay monthly rent in the amount of \$728.97 since January 2022. I find the tenant did not pay the balance of October 2021 rent in the amount of \$11.12, November and December 2021 rent in the monthly amount of \$718.20.

Section 26(1) of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Pursuant to section 53(2) of the Act, the effective date of the Notice is corrected to December 30, 2021. Otherwise, I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and is in the approved form.

Based on the above, I find the tenancy ended on December 30, 2021, per section 44(1)(a)(ii) of the Act. I dismiss the tenant's application to cancel the Notice and award the landlord an order of possession, per section 55(1) of the Act.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

As the landlord is only seeking an order of possession, I do not award a monetary award for unpaid rent under section 55(1.1) of the Act.

Conclusion

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the landlord effective **two days after service of this order** on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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 01, 2022

Residential Tenancy Branch