



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing was conducted in response to the Tenant's Application for an emergency hearing pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:47 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant 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 tenant and I were the only ones who had called into this teleconference.

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

Preliminary Issue 1: Service of Documents

Rule 10 of the Residential Tenancy Branch Rules of Procedure governs the "Expedited hearing" process and requirements.

Rule 10.3 "**Serving the notice of dispute resolution proceeding package**" reads as follows:

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

Upon review of the tenancy agreement and the Proof of Service (#RTB-9) form, I note the landlord's address on the Tenancy Agreement was different from the address on the Proof of Service form. The

tenant explained the discrepancy stating that the landlord owns three residential properties beside each other. She stated that the landlord moved out of the property listed on the tenancy agreement into the basement suite of the property listed on the Proof of Service document. The Notice of Dispute Resolution was served to his current residence.

The tenant testified she served the landlord personally with the notice of dispute resolution form and evidence on May 28, 2022. When she handed the landlord the Notice of Dispute Resolution Proceedings, the landlord ripped up the Notice in front of her. The tenant did not provide an #RTB-9 as required documenting this service.

The tenant then went to her parent's place and printed two copies of the Notice and posted one copy on the door of the basement unit and saw the landlord remove the notice from door after she posted it.

The tenant submitted a Proof of Service form signed, dated, and witnessed. According to the #RTB-9 the notice was served at 9:00 a.m. on March 29, 2022 to the landlord by posting the notice to the door of the basement unit.

Policy Guideline 12, part 15 "Proof of Service" reads in part:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

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Proof of service by methods other than personal service or Registered Mail/Express Post with signature option should include:

- the date and time of service
- details of the method used to serve, including:
 - the name of the adult served,
 - if posted, the address where the documents were attached,
 - the fax number to which the document was faxed and proof that the fax transmission was completed,
 - the email address to which the document was emailed and proof that the email was sent,
 - the address of the mailbox or mail slot used
 - who effected service

A photograph of a posted or deposited document in its posted or deposited location may reinforce the veracity of service. A screenshot or photo of a sent email that shows the email address the document was sent to, as well as the date and time sent may be used as evidence of service.

In compliance with the standing order of the Director, as the hearing was scheduled more than 17 days after the application, the tenant may serve the materials "by attaching a copy to the door or other conspicuous place at the address at which the person resides". Although the tenant did not provide a photo of the posted document as recommended but not required, she did provide a Proof of Service (#RTB-9) form complying with the form and content described above.

Based on the deeming provision of the Act and the undisputed evidence of the tenant in relation to the service of documents, I am satisfied that the tenant served the landlord with the required documents for this hearing and the landlord is deemed to have been served on April 1, 2022. The hearing continued on the undisputed evidence of the tenant.

Issues to be Decided

Is the tenant entitled to:

- 1) an order to the landlords to an order requiring the landlord to provide the tenant with a means to obtain power to the rental unit.

Background and Evidence

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

The parties entered into a written month-to-month tenancy agreement starting March 9, 2022. Monthly rent is \$950.00 and is payable on the 9th day of each month. The tenant testified she paid the landlord a security deposit of \$950.00. The landlord still retains this deposit. The tenant stated that in addition to a full months' security deposit of \$950.00, the landlord required two (2) months advance rent of \$1800.00. The tenant submitted a partial copy of the tenancy agreement.

The tenant explained that she is employed as a caregiver to an older man with mobility issues who is unable to negotiate stairs. She called the man a 'roommate'. She explained that her caregiving assignment requires her to be onsite during the day and some weekends she stays the night.

The tenant stated that her mother previously owned this property and sold it to the current landlord. Since the tenant was familiar with the location and the property having lived there, and since the rental unit was available and a two-bedroom rental on one level, she approached the current property owner/landlord about renting.

On March 8, 2022 the tenant moved her roommate's belongings into the rental unit. On March 9, 2022, the roommate took possession of the rental unit. On the 9th, around 7:30 p.m. the tenant came by to check on the roommate and discovered that there was no electricity. The tenant spoke with the landlord, who told her that electricity was not included in the rent, and she needed to set up her own account with BC Hydro.

The tenant contacted BC Hydro and tried to set up an account. BC Hydro refused to connect power to the rental unit stating that there was a \$6000.00 outstanding balance owing from that address. The BC Hydro representative told the tenant that they could do nothing until the landlord contacted them to resolve the issue.

On March 10, 2022 the tenant spoke to the landlord's wife explaining the problem with hydro and the landlord's wife said she would call BC Hydro and speak with them. The tenant then re-contacted hydro and was told that they were told that there was no new tenants at this address.

The tenant again spoke with the landlord's wife, requesting to speak with the landlord about the hydro issue. The landlord's wife told the tenant that her husband left for India. On March 13, 2022, the tenant spotted the landlord in his driveway and said, "Your wife said you were in India." The landlord did not respond. She then told the landlord about her conversation with hydro and that his wife told hydro that there were no new tenants. The landlord stated that his wife did not speak English well and must have misunderstood what hydro asked. He committed to calling hydro and clearing up the misunderstanding.

Again, the tenant called and spoke with hydro to see if the matter had been resolved and was told "no". The tenant then sent a copy of the tenancy agreement to hydro showing that the tenancy agreement was a "new" agreement. The rental unit remains without power.

The tenant then spoke with another tenant (LA) who lives in the shed on the property. LA said he and his brother (MA) lived in the shed together, but MA moved. The tenant discovered that the landlord had set up the hydro account in the MA's name and MA was never a tenant in the main residence.

On April 7, 2022 the landlord arrived with an Order of Possession dated March 29 with some other tenants' names on the order. She pointed this out to the landlord, and he said it did not matter and he would have the belongings removed by a bailiff. She refused to move and told the landlord so, pointing out that she had an upcoming hearing with the Residential Tenancy Branch. He responded, "Let's see who can do something to me." The tenant did not have a copy of the order with her at the time of the hearing.

On the long weekend, a man knocked on the door and said that he was a "bailiff". She asked him why he was working on a holiday, and he left saying he would be back.

The tenant stated that the landlord soon began to intimidate and bully her. In April, she went to the rental unit to move some of her possessions out and when she came out to her car, all four of her tires were punctured. The neighbors said that the landlord punctured her tires with a hammer claw. Police were called but told her there was not enough evidence to lay charges. She had a surveillance camera in the home but without electricity it does not work.

Since there was no heat or lights, the tenant moved her roommate to her parents' home but after a while, despite the tenant's misgivings, the roommate insisted to move back into the rental unit because he wanted to be in his "permanent place". The primary tenant was subsequently hospitalized, she believes as a result of the living conditions.

The tenant states that she is scared and frustrated. She is concerned that the belongings in the house will be left on the street or sold. She is planning to vacate the rental unit by the end of April but wants the electricity turned on.

The tenant concluded by stating she spoke with several neighbors who told her that the landlord has a pattern of making people pay up front and then forcing them to move and/or removing their belongings and holding a garage sale.

Analysis

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation. Section 33(1) defines emergency

repairs as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and includes "electrical systems".

A landlord failing to provide a tenant with the means to access power is a breach of the Act. Notwithstanding the above, the onus is on the applicant to prove non-compliance with the Act.

Other than a partial tenancy agreement and the Proof of Service document, the tenant provided no additional documentary evidence. I have considered the tenant's undisputed oral testimony. The tenant stated that she approached the landlord twice about the problem with hydro and then made the request in writing. She stated that she contacted and spoke to BC Hydro several times and they refused to reinstate power because of an outstanding balance on the account. She testified that the landlord has engaged in a campaign of harassment and bullying, including slashing her tires and giving her an Order of Possession and sending someone possibly posing as a bailiff to the residence. The tenant provided no supporting evidence.

The Notice of Dispute Resolution Proceeding provides instructions to the applicant on page 2 of the document. The instructions read in part:

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- **It is important to have evidence to support your position with regard to the claim(s) listed on this application.** For more information see the Residential Tenancy Branch website on submitting evidence.

Supporting evidence may include but is not limited to:

- A complete tenancy agreement.
- Rent receipts.
- The order of possession the landlord delivered.
- Emails and information from BC Hydro.
- Witness statements.
- Police report(s).

Taking into careful consideration the evidence presented and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving the application for an order pursuant to s. 33 of the Act. I find the tenant did not present sufficient evidence to support her position with regard to the claim made. I dismiss the tenant's application, with leave to reapply. Further, the tenant(s) may file an application for any claims allowed under the Act from the landlord for any damage or loss incurred.

Policy Guideline #41 addresses referrals of dispute resolution decisions to the Compliance and Enforcement Unit. Because I am concerned that the landlord has contravened the requirements of the Act in a particularly egregious manner by failing to provide the tenants with a means to access power that pursuant to s. 27 is essential to the tenant's use of the rental unit as living accommodation, I am sending a copy of this decision to my manager. My manager will review this decision and if they are of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this decision along with other relevant materials from the dispute resolution files in which you have been

a party to the compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the compliance and Enforcement Unit can review the contents the dispute resolution files in which you have been a party, they can also consider additional evidence that was not before me or other arbitrators. They are not bound by the finding of fact I or other arbitrators have made in our decisions.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

The tenant's application is dismissed with 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: April 21, 2022

Residential Tenancy Branch