



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D.S. Bains Holdings Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: OPC
For the Tenant: CNC, FFT

Introduction

On March 16, 2022 the Tenant applied for dispute resolution for an order cancelling the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Landlord. They also applied for reimbursement of the Application filing fee.

On May 19, 2022 the Landlord applied for an order of possession of the rental unit.

These matters are crossed and proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 8, 2022. The landlord attended the telephone conference call hearing; the tenant did not attend.

Preliminary Issue – Landlord service of Notice of Dispute Resolution Proceeding

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the Notice of Dispute Resolution related to their Application for this hearing. This means the Landlord must provide proof that they served the document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Landlord set out how they served their Notice to the Tenant using registered mail, regular mail, and leaving a copy in the mailbox at the rental unit. The Landlord’s evidence they provided for this matter contains copies of the registered mail tracking record and identifying tracking numbers. This shows the mail sent on June 3, 2022 and delivered to the rental unit address on June 6.

Based on this evidence, I accept that the Landlord served the notice of their Application to the Tenant in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the Tenant's absence.

Preliminary Issue – Tenant service of Notice of Dispute Resolution Proceeding

At the start of the hearing, the Landlord provided that they did not receive notice from the Tenant about their Application for Dispute Resolution. The Landlord described a discussion with the Tenant wherein the Tenant described papers to serve; however, they did not ever actually complete service.

The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution. Subsection (3) states: “. . .a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.”

The *Act* s. 89 gives the rules for service of the application for dispute resolution. This is by leaving a copy with the person or their agent or sending a copy via registered mail.

Additionally, the Rules of Procedure that are crafted to ensure a fair process; these specify the documents to be served by the applicant (here, the Tenant) to the respondent (here, the Landlord). These are: the Notice of Dispute Resolution Proceeding provided when applying; the Respondent Instructions for Dispute Resolution; a process fact sheet; and other evidence submitted by the applicant.

I find the Tenant did not provide a copy of the notice of dispute resolution proceeding – that document that is generated when a person applies for dispute resolution – to the Landlord. The *Act* requires proper service in line with administrative fairness in which a party's legal rights and obligations are challenged. I dismiss the Tenant's Application for Dispute Resolution for this reason.

Preliminary Issue – Tenant non-attendance to scheduled hearing

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 9:48 a.m. to enable them to call in to this teleconference hearing scheduled for 9:30 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when they applied. I also confirmed throughout the duration of the call that the tenant was not in attendance.

The *Residential Tenancy Branch Rules of Procedure* Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenant's application for cancellation of the 10-Day Notice. The tenant does not have leave to reapply on this issue.

Issue to be Decided

Is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Background and Evidence

The Landlord provided a statutory declaration for this matter, declared on June 15, 2022, and duly served to the Tenant in their evidence package.

In this statement, the Landlord provided that the Tenant here moved into the rental unit "more than 40 years ago". This continues on a month-to-month tenancy with rent of \$1,251 per month, and payment of utilities in the Tenant's name.

The Landlord provided a copy of the One-Month Notice signed by the Landlord on March 8, 2022. This gave the reason for its issuance as:

- The Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord
- The Tenant put the Landlord's property at significant risk.
- The Tenant caused extraordinary damage to the unit/site or property.

They served this document by providing a copy in the mailbox or mail slot of the rental unit. As provided in a 'Proof of Service' document, a witness observed this service and signed a statement attesting to that on March 9, 2022.

The One-Month Notice initially gave the end-of-tenancy date as April 15, 2022. The Landlord corrected this date by notifying the Tenant of this by letter dated March 30, 2022, hand-delivered. The Landlord clarified the correct move-out date was April 30, 2022.

In their statutory declaration, the Landlord provided a timeline of the issue regarding the state of the rental unit property. The municipality notified the Landlord of the problem from their perspective and worked with the Landlord in clearly setting out why this was a problem. This also involved bylaw officers visiting to the rental unit property and conferring with others who

lived on the rental unit property. The Landlord provided all communication from the municipality, as well as copies of the local bylaws in question.

The Landlord provided photos showing the state of the rental unit, with extra vehicles in various states on the property. The Landlord described the immediate issues of extra people living on the rental unit property using a very old septic tank. Of particular concern to the Landlord was the person living on the property who threatened the Landlord.

The Landlord described how neighbours in the area had enough with the noise and cluttered state of the property. Their complaints are what is driving the process with local bylaw officers who are investigating and following up regularly with the Landlord.

The Landlord also provided their own communication to the Tenant that sets out repeated requests for clean-up of the property. The responses from the Tenant give various reasons on why they cannot accomplish a final clean-up by set dates as requested by the Landlord.

In the hearing the Landlord provided that the Tenant remained at the rental unit.

Analysis

From the evidence and testimony of the Landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments. The Tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The Landlord issued a One-Month Notice on March 8, 2022, then serving that to the Tenant on March 9, 2022. This was for repeated failures to clean-up the rental unit property, and the impact it is having on the Landlord having to deal with bylaw officers and repeated threats of fines from the municipality. Page 2 of the document contains the important instruction to a Tenant on disputing the One-Month Notice within 10 days of receiving it.

By s. 90(d), the One-Month Notice was deemed served to the tenant on March 12, 2022. The Tenant did apply to dispute this One-Month Notice within 10 days granted under s. 47(4) of the *Act*; however, they did not attend the hearing and I dismissed their Application for cancellation of the One-Month Notice for this reason.

On my review of the document, the One-Month Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52.

The *Act* s. 55(1) states that if a Tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the Landlord's notice is upheld, the Landlord must be

granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. By this provision, I find the Landlord is entitled to an Order of Possession.

Conclusion

Under s. 55(1) and s. 55(3) 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, the Landlord may file this Order with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 8, 2022

Residential Tenancy Branch