



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINDALE DEVELOPMENT ASSOCIATION & CANADIAN MENTAL HEALTH ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC FFT, OPC, FFL

Introduction and Preliminary Matters

On April 27, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 12, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. B.E. and T.R. attended the hearing as agents for the Landlord. E.M. and W.W. attended the hearing as well, and E.M. advised that her company had taken over managing the rental unit as of August 1, 2022. As such, the Style of Cause on the first page of this Decision has been amended to add this company as a Respondent/Landlord.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant initially advised that he was not able to serve the Landlord the Notice of Hearing package as he did not have the means to serve the Landlord in person. When he was informed that there were other manners with which to serve the package, he provided a wide-ranging variety of reasons why this was not done. Among those, he indicated that he was never provided with the Notice of Hearing package, regardless of records indicating that this package was provided to him on May 10, 2022. Despite this, he also stated that he was provided no information on how to serve the Notice of Hearing package. He claimed to have attempted to contact the Residential Tenancy Branch, but was unable to speak to anyone, so he had no idea what to do.

When he was then asked why he made an Application for Substituted Service if he had been unable to obtain any information about serving the Notice of Hearing package, he stated that a friend informed him of this. However, he later changed this testimony. Regardless, when he received the Decision dated June 1, 2022, that denied his request for Substituted Service, he confirmed that he still did not make any attempts to serve this package to the Landlord, despite the Decision outlining other acceptable methods of service.

Based on this undisputed testimony, the Notice of Hearing package was not served to the Landlord at all. When reviewing the Tenant's inconsistent, varying, and contradictory testimony, I am doubtful of the truthfulness or credibility of his submissions on the whole. I find that the Tenant, more likely than not, did receive the Notice of Hearing package. Furthermore, I do not accept that the Tenant did not know how to serve the Landlord this package, other than in person. Given that he applied for Substituted Service, and it was made obvious in this Decision that there were alternative methods to serve the Landlord this package, there is no evidence that the Tenant made any attempts after receiving this Decision to serve the Landlord. Based on a balance of probabilities, I am satisfied that the Tenant either intentionally, or through ambivalence, neglected to serve the Notice of Hearing package. Consequently, I dismiss the Tenant's Application without leave to reapply.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

As the Tenant's Application is dismissed without leave to reapply, and as the Notice is valid, I find that the Landlord is entitled to an Order of Possession pursuant to Section

55(1) of the *Act*. Ultimately, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of this debt outstanding.

Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

Moreover, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlords. 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: August 26, 2022

Residential Tenancy Branch