



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant Application:	CNC, LRE, OLC, MNDCT, MNRT, FFT
Landlord Application:	OPR-DR, MNR-DR, FFL

Introduction

The Tenant filed an Application for Dispute Resolution on April 7, 2022 seeking:

- cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- compensation for monetary loss or other money owed;
- compensation for the cost of emergency repairs they made during the tenancy
- the Landlord’s compliance with the legislation and/or the tenancy agreement;
- restriction/set conditions on the Landlord’s right to enter the rental unit;
- reimbursement of the Application filing fee.

On May 10, 2022, the Landlord filed an Application for an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) they issued on May 1, 2022, recovery of unpaid rent, and reimbursement of the Application filing fee. They applied via the Direct Request method which would not require a participatory hearing; however, the Tenant’s Application was already in place and the Residential Tenancy Branch joined the two Applications.

On July 20, 2022 the Landlord amended their Application to account for further unpaid rent amounts they wished to claim.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 4, 2022. Both parties attended the conference call

hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – unrelated claims

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

The matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the Landlord.

Because of this Rule, I dismiss the Tenant’s requests for monetary compensation, with leave to re-apply. There were no submissions and no explanations of prepared documentary evidence with respect to these issues.

Preliminary Matter – Tenant service of Notice of Dispute Resolution to Landlord

The Landlord’s agent in the hearing stated they did not receive the Notice of Dispute Resolution from the Tenant. They received a copy from the Residential Tenancy Branch, as shown in the record, on July 7, 2022.

The Tenant described posting a copy of the Notice of Dispute Resolution to the Landlord’s door at the address the Landlord set out on the One-Month Notice. They taped a white envelope to the door that was accessible from the back alley. The Tenant stated this included their evidence they provided for this hearing. The Tenant stated this was on April 20, 2022, and they specified the time of 6:32pm.

April 20 is the date the Tenant received the Notice of Dispute Resolution from the Residential Tenancy Branch. The record shows this was provided to the Tenant via email at 6:48pm. On that same day, the Tenant made a request for Substituted Service, a process that is normally reserved for instances where the normal routes of

service that are set out in the *Act* are not available to a party to a dispute resolution. The Tenant made their Application for in-person service to the Landlord; on May 18 an adjudicator determined that this was already a method prescribed by the *Act*, and thus not a method of substituted service.

For their Application for substituted service, the Tenant provided a photo to the Residential Tenancy Branch. This shows a door with an envelope affixed to it bearing the Landlord's address. This does not appear to be an outside door as I stated to the parties in the hearing. The Tenant stated they never went to this address before, and stated "it could be a basement door, I have no idea".

The Landlord maintained they did not receive anything from the Tenant in regard to their Application. They only received a copy of the Notice from the Residential Tenancy Branch when they called to inquire, and the Branch sent the copy as a courtesy. The Landlord provided that the main door to their residence is not brown, has a floral pattern and is a white door with glass.

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."

Additionally, the *Act* s. 89 gives the rules for service, specifically for a party's Notice of Dispute Resolution. Attaching a copy to a door or other conspicuous place is not a listed method for this special document.

Additionally, the Rules of Procedure 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 to the Landlord as required. They did not ensure its delivery to the correct address for service provided to them by the Landlord. A dark basement door entry via back alley should make logical sense as not being the main entrance to a person's home. Additionally, the Tenant applying for substituted service on the same day the Notice was sent to them from the Residential Tenancy Branch was not necessary, and the Tenant then

proceeded with service by that method they applied for, prior to receiving the adjudicator's decision.

The Tenant gave the time of service at 6:32pm; however, the record shows that the residential Tenancy Branch mailed the document to them at 6:48pm. This fact on its own does not carry much weight, but in combination with the other statements by the Tenant regarding service, it puts the credibility of the Tenant into question.

There were simpler, and more verifiable methods of service available to the Tenant as per s. 89 of the *Act*. The Tenant did not state why they chose this unreliable method of service over others. They did not ensure proper service of the Notice, or their prepared evidence, to the Landlord's address for service in a timely manner. This has prejudiced the Landlord in this hearing.

The *Act* requires proper service in line with administrative fairness in which a party's legal rights and obligations are challenged. I find the Landlord was prejudiced by the lack of notification from the Tenant, and non-disclosure of the Tenant's evidence. I dismiss the Tenant's Application for Dispute Resolution regarding the One-Month Notice for this reason, without leave to reapply.

Issue(s) to be Decided

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

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for their Application, pursuant to s. 67 of the *Act*?

Background and Evidence

In the hearing, the Landlord and the Tenant spoke to the terms of the tenancy agreement, a copy of which the Landlord provided as evidence. The tenancy began on April 15, 2014 with a rent amount of \$1,850 per month payable on the last day of each month. The Landlord clarified each month's payment was for the following calendar month.

The Landlord and Tenant jointly signed a renewal agreement on February 28, 2022. This set out the current rent amount of \$2,400.

The Landlord provided a copy of the 10-Day Notice they signed on May 1, 2022. This document gave the move-out date of May 17, 2021. This listed the failure by the Tenant to pay the rent of \$2,400 on April 30, 2022. The Landlord served this document by attaching it to the door of the rental unit. As provided in a 'Proof of Service' document, a witness also signed the document to show they observed this method of service. This was after knocking on the door with no answer.

In the hearing, the Tenant verified they found this document right after the Landlord left from their rental unit entry on May 1.

The Tenant also presented they did not pay rent on April 30 because they remained angry from the Landlord's supposed harassment. This involved banging the door on the rental unit frightening their family members, requiring the Tenant to call the police. The Tenant re-stated and confirmed a second time that they did not pay that month's rent. The Tenant also verified they did not pay rent within the amount of time set out on the 10-Day Notice – this is the 5-day period in which they could have paid the rent amount owing, or filed an Application to dispute the 10-Day Notice.

The Landlord's amendment to their Application, signed June 16, 2022 and received at the Residential Tenancy Branch on July 20, 2022, adds the following months of June, July and August, for a total amount of rent owing at \$9,600. The Tenant made no indication or statement in the hearing to submit that they paid rent to the Landlord over the ensuing months.

Analysis

From the evidence and testimony of the parties, I am satisfied that a tenancy agreement was in place. The agreement sets out the basic amount of rent, and clearly states the rent payment date that the Tenant agreed to.

I accept the evidence before me that the Tenant failed to pay the rent owed in full by May 5, 2022, within the five days granted under s. 46(4) of the *Act*. The Tenant also not dispute the 10-Day Notice within that five-day period. The Tenant is conclusively

presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective day of the 10-Day Notice, May 10, 2022.

The Landlord is entitled to an Order of Possession as per s. 55 of the *Act*, in which (1) provides for that order where the notice to end tenancy complies with the s. 52 requirements for form and content. On my review, I find the document complies with each requirement in s. 52.

The *Act* s. 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the tenant failed to pay full rent for May 2022 through to the hearing date in August 2022. The Landlord provided an amendment to their Application; I find it logical that the Landlord reasonably anticipated unpaid rent up to and including the calendar month of the hearing, in August 2022. As presented, I find the Landlord is entitled to the amount of \$9,600 as they claim, and I grant this award for compensation via s. 55(1.1) of the *Act*.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$9,600. After setting off the security deposit amount of \$920, there is a balance of \$8,680. I am authorizing the Landlord to keep the security deposit and award the balance of \$8,680 as compensation for rent owing.

As the Landlord is successful, I find that the Landlord is entitled to recover the \$100 filing fee paid for this application.

Because the tenancy will end, I find there is no ongoing Landlord-Tenant relationship between the parties. In line with this I dismiss, without leave to reapply, the Tenant's claim for the Landlord's compliance with the legislation and/or the tenancy agreement, and a restriction on the Landlord's right to enter. The Tenant was not successful in their Application; therefore, I do not award recompense of the Application filing fee.

Conclusion

For the reasons above, I dismiss the Tenant's Application in its entirety.

Pursuant to s. 55 of the *Act*, I grant the Landlord an Order of Possession effective TWO DAYS after they serve it to the Tenant. The Landlord must serve this Order of Possession 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.

Pursuant to s. 55(1.1) and s. 72 of the *Act*, I grant the Landlord a separate Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$8,780. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 4, 2022

Residential Tenancy Branch