# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, OLC, FFT

Introduction

The Tenant filed their Application for Dispute Resolution (the "Application") on April 6, 2022, challenging the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice") issued on April 2, 2022. Additionally, they seek the Landlord's compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee.

On May 30, 2022 the Tenant amended their Application to dispute another 10-Day Notice issued in May 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on August 18, 2022. The initial hearing date of July 29, 2022 was moved by the Residential Tenancy Branch due to a scheduling error.

The Tenant and the Landlord both attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matter – Tenant's service of evidence

The Tenant explained that they sent the Notice of Dispute Resolution Proceeding to the Landlord via registered mail on April 16, 2022. This is within two days after they received it from the Residential Tenancy Branch. The Landlord acknowledged service of this document to them.

The Tenant provided evidence to the Landlord via registered mail on July 11, with delivery completed on July 13. This is shown in a printout of the registered mail tracking record the Tenant provided in their evidence. The Landlord stated they picked up the documents from

the post outlet on July 15, and stated this was “not received in time” being “a day late” prior to the first hearing on July 29, 2022. The Landlord submitted that these were documents that the Tenant “should have served originally”, and they were prejudiced by not being able to respond to the information therein in a timely manner: “we didn’t have any documents to respond to.”

As per the *Residential Tenancy Branch Rules of Procedure*, the Landlord is referring to Rule 3.14 which provides that an applicant must provide their evidence to a respondent “not less than 14 days before the hearing.” The Landlord stated plainly they retrieved the documents on July 15. This is exactly 14 days before the hearing date of July 29. I find this is NOT “not less than 14 days” and I give full consideration to the Tenant’s evidence that they provided to the Landlord within the timeline established in the *Rules*. I acknowledge this is not service in a timely manner with respect to all evidence available to the Tenant at the time they applied in April; however, I find the delivery timeline did not prejudice the Landlord here.

Preliminary Matter – Landlord’s service of evidence

The Landlord presented in the hearing that they served their documents to the Tenant on July 14, 2022. They sent the documents to the rental unit address, and then sent a duplicate set via registered mail after they were not able to serve the documents to the Tenant in person. The Tenant did not pick up the registered mail.

On their Application, the Tenant provided a second address they specified as an address for service of documents, separate from the rental unit address, in use for 10 years previously. In the hearing the Tenant noted they did not receive the Landlord’s submitted evidence. The Tenant stated, “I never get mail [at the rental unit]” and they “never opened the box”.

The *Residential Tenancy Policy Guidelines* provide for the policy intent of the *Act*. Specifically, Policy Guideline 12 covers all provisions of service of documents. Regarding Registered Mail on a party’s Application for dispute resolution: “Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.” A forwarding address concerns only an end of tenancy when a tenant has moved elsewhere.

I find the Landlord sent their material via registered mail to the rental unit address, and this is what the Policy Guideline allows for. It is reasonable in these circumstances for the Tenant to receive documents relating to this tenancy at the rental unit address. The Landlord described wanting to complete in-person service at that address that the Landlord was not able to accomplish; it is reasonable for the Landlord to follow up with registered mail to that same rental unit address. Without specific communication from the Tenant about a separate

address, I find that they are not prejudiced by the inclusion of this material for my consideration in this hearing. I find the Landlord's evidence was deemed served to the Tenant on July 19 as per s. 90(a) of the *Act*. I give the Landlord's evidence full consideration in this hearing with this completed service in mind.

Preliminary Matter – the 10-Day Notice at issue

At the outset of the hearing, the Landlord clarified that they cancelled the 10-Day Notice issued on April 2, 2022. I conclude this 10-Day Notice withdrawn by the Landlord and not the subject of this hearing.

The Tenant amended their Application on May 30, 2022, to include the second 10-Day Notice issued by the Landlord on May 25, 2022, included in their evidence. They completed an additional two-page written statement in which they set out their position on virtually all matters of the tenancy.

The amendment form itself states: "Provide a copy of this form to every respondent by registered mail, in person or to an email address provided for service."

The Landlord noted they discovered the Tenant amended their Application only from their contact with the Residential Tenancy Branch, and not directly from the Tenant. The record shows the Landlord contacted the Residential Tenancy Branch on June 8, inquiring on whether the Tenant amended their Application.

The Policy Guideline 23 sets out the provisions for a party amending an application for dispute resolution. This sets out that an applicant must serve a respondent with a copy of an amendment along with all supporting evidence "as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing." This then leaves the matter for an arbitrator to consider whether principles of administrative fairness were met through the amendment, and whether any party would be prejudiced by accepting the amendment. The arbitrator decides whether "to accept the amendment(s) and records the determination in a written decision."

The *Residential Tenancy Branch Rules of Procedure* specify the same, adding: "The arbitrator may hear the application as amended, dismiss the application with or without leave to reapply, or adjourn the hearing to allow the respondent an opportunity to respond."

I find the record shows the Tenant did not notify the Landlord of their Amendment to include the 10-Day Notice issued by the Landlord on May 25, 2022. The Tenant's Amendment included a two-page statement that should have properly been disclosed to the Landlord as part of the Application, and in line with the principles of procedural fairness. The *Act* requires proper service in line with administrative fairness in which a party's legal rights and obligations are challenged. There is no evidence that shows the Tenant made this Amendment known to the Landlord as required. I find the Landlord is prejudiced if I accept this amendment and consider the evidence therein that was not disclosed to them.

For these reasons, I dismiss the Tenant's Application. Given this concerns an end of the tenancy, I dismiss without leave to reapply.

## Issue(s) to be Decided

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

Is the Landlord obligated to comply with the legislation and/or the tenancy agreement?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

## Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties. This shows the tenancy started on March 1, 2022 for $3,000 per month. The parties signed the agreement on February 10, 2022. Of note to the Landlord, the rent amount does not include utilities, specifically electricity.

The Landlord provided a copy of the 10-Day Notice signed by the Landlord on May 25, 2022. This provided a move-out date of June 7, 2022. On page 2, the Landlord indicated the Tenant failed to pay a utility amount of $19.98 that was due on April 19, 2022.

In their written timeline of events the Landlord noted they issued a demand for payment of utilities on April 10 and April 19, providing a copy of "the BC Hydro bill for the period of March 1/22 to March 27/22." By April 19 the Landlord requested payment "in full by or before May 1, 2022." A copy of these reminders and the bill in question, dated March 30, 2022, appears in

the Landlord's evidence.

The Landlord included earlier communication from March 19 in which they clarified for the Tenant that the Tenant had possession as of March 1, so the period from March 1 onwards is the Tenant's responsibility, based on the agreement, "not when you choose to move in." They responded to the Tenant's assertion that "Hydro . . . cover[s] the hydro after move outs and until move-ins happen which is March 28th."

In their evidence the Landlord also provided a basic information sheet on "Unpaid Rent or Utilities". This sets out that "A landlord can give a 10 Day Notice to End Tenancy if rent or utilities are not paid by midnight on the due date. This notice may be served to a tenant . . . 30 days after giving a written demand for a utility payment."

Analysis

The *Act* s. 46 states, in part:

**46** (6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The *Act* s. 52 states:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

(a)be signed and dated by the landlord or tenant giving the notice,

(b)give the address of the rental unit,

(c)state the effective date of the notice,

(d). . . state the grounds for ending the tenancy,

. . .and

(e)when given by a landlord, be in the approved form.

From the evidence, I am satisfied that a tenancy agreement was in place. This clearly shows that electricity is not included in the monthly rent amount.

The Landlord issued a 10-Day Notice on May 25, 2022, serving that to the Tenant on that same day. This was for a utility amount owing of $19.98. The record shows the Landlord

made their request to the Tenant for payment on March 19, 2022. There is no record of payment by the Tenant by April 19, 2022. On April 19, the Landlord made another request for payment by May 1, 2022. The attached bill clearly shows the amount in question.

Above, I dismissed the Tenant's Application for Dispute Resolution because they did not notify the Landlord of their amended Application as required by the Rules of Procedure and set out in Policy Guideline 23. In effect, they did not contest the 10-Day Notice served by the Landlord on May 25, 2022 within the timeframe required.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and a tenant's application is dismissed or a landlord's notice is upheld, a landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*.

On my review, the document as it appears in the Landlord's evidence complies with the requirements of s. 52, and with this verification, I find the Landlord is entitled to an Order of Possession.

I grant a Monetary Order to the Landlord requiring the payment of the unpaid utility, as per s. 55(1.1) of the *Act*.

The Tenant was not successful on this Application; therefore, I grant no award for recovery of the filing fee. Given that the tenancy is ending, I dismiss the Tenant's request for the Landlord's compliance with the tenancy agreement and/or the legislation.

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.

I order the Tenant to pay the Landlord the amount of $19.98, pursuant to s. 55(1.1) of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) 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: September 12, 2022

Residential Tenancy Branch