



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL; CNR, LRE, LAT, AS, OLC

Introduction

This hearing dealt with the landlord's application, filed on September 26, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order of \$4,150.00 for unpaid rent, pursuant to section 67;
- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on September 15, 2022, pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order allowing the tenants to assign or sublet the rental unit because the landlord's permission has been unreasonably withheld, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62.

The two tenants, "tenant SS" and "tenant BM," did not attend this hearing, which lasted approximately 23 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. The landlord was upset and unexpectedly disconnected from this hearing at 9:52 a.m., while I was still talking and answering her

questions. I ended the hearing at 9:53 a.m., as the landlord did not call back into the hearing and there were no other participants present.

The landlord confirmed her name and spelling. She provided her email address for me to send a copy of this decision to her after the hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord affirmed, under oath, that she would not record this hearing.

I explained the hearing process and the potential outcomes and consequences to the landlord. I informed her that I could not provide legal advice to her or act as her agent or advocate. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

Preliminary Issue – Inappropriate Behaviour by the Landlord during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout this hearing, I repeatedly cautioned the landlord about interrupting and speaking at the same time as me. I was required to repeat my questions, clarifications, and explanations to her, many times throughout this hearing. She continued to argue with me and debate with me about my decision to dismiss her application.

However, I allowed the landlord to attend the full hearing, despite her inappropriate behaviour, in order to allow her to present her submissions and ask questions.

Preliminary Issue – Dismissal of Tenants’ Application

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants’ application.

Rule 7.3 of the RTB *Rules* states:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, the landlord may be entitled to an order of possession and a monetary order for unpaid rent, if the landlord's 10 Day Notice meets the requirements of section 52 of the *Act* and the landlord provides sufficient evidence to obtain the above orders, on a balance of probabilities.

Preliminary Issue – Service of Landlord's Application

The landlord testified that she served tenant BM, not tenant SS, with the landlord's application for dispute resolution hearing package, by way of registered mail on October 3, 2022. When I asked how that was possible when the notice of hearing was issued on October 12, 2022, she then claimed that she served the application to tenant BM on October 12, 2022. The landlord did not provide a valid Canada Post tracking number for the registered mailing.

Section 59(3) of the *Act* states the following:

Starting Proceedings

59 (3) Except for an application referred to in subsection (6), 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.

Rule 3.1 of the RTB *Rules* states, in part:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

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

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

The landlord was provided with two application packages from the RTB, including instructions regarding the hearing process. The landlord was provided with two documents entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing her application and receiving a copy of the tenants’ application. The two NODRP documents contain the phone number and access code to call into this hearing.

The two NODRP documents state the following at the top of page 2, in part (my emphasis added, which was referenced by me during this hearing):

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 regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- Parties (or agents) must participate in the hearing at the date and time assigned.*
- The hearing will continue even if one participant or a representative does not attend.*

- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

Section 89(1) of the Act outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

89 (1) An application for dispute resolution ..., when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) **by sending a copy by registered mail to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) **if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;***
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

***Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing** the date of service, the address of service, and that **the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

According to the online RTB dispute access site, the RTB sent the landlord's application package to the landlord on October 12, 2022, and informed her to serve the tenants by October 15, 2022. Also, according to the online RTB dispute access site, the RTB contacted the landlord by email on October 31, 2022, asking if this hearing was still required and the landlord responded by email, on the same date, indicating that the hearing was still required.

I find that the landlord did not serve the two tenants with the landlord's application, as required by sections 59(3) and 89 of the *Act*, Rule 3.1 of the *RTB Rules*, Residential Tenancy Policy Guideline 12, and as stated on the two NODRP documents that were received by the landlord. The landlord testified that she did not serve tenant SS with the landlord's application, at all. The landlord did not provide a valid date of service for tenant BM, since October 3, 2022, is prior to the notice of hearing being issued on October 12, 2022. The landlord did not provide a valid Canada Post tracking number to prove service by registered mail to tenant BM on October 12, 2022. The landlord was provided with ample time of 23 minutes during this hearing, in order to search for and provide accurate service information and failed to do so.

I informed the landlord that I could not consider her application or written evidence at this hearing or in my decision, since she did not provide proof of service regarding same. I informed her that I could only consider her verbal testimony as evidence and that she was required to provide sufficient evidence in order to obtain an order of possession and a monetary order, based only on the tenants' application to cancel the 10 Day Notice.

Preliminary Issue – Jurisdiction and Dismissal of Landlord's Application

Residential Tenancy Policy Guideline 9 states the following, in part:

A. LEGISLATIVE FRAMEWORK

Tenancy agreement is defined in the Residential Tenancy Act (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

...

B. TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and*
- the tenant pays a fixed amount for rent.*

C. LICENCES TO OCCUPY

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time...

The following sections of the Act state, in part:

Definitions

1 In this Act:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes]...

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following...*

At the outset of this hearing, the landlord stated that she did not know if tenant SS was a tenant. She also claimed that tenant SS was not a tenant. She explained that tenant BM was a "squatter," and the police told her to file an RTB application to remove him from the rental unit. She said that she was not sure of tenant BM's legal name, but she got his name from his probation officer. She said that she provided written proof from the probation officer in her 194-page evidence package, but she did not know which

page number, because she did not know that she had to number her pages. The landlord also claimed that a tenancy never began, and she did not sign a written tenancy agreement with the tenants. She said that she filed an application against the tenants because tenant BM filed an application against her first.

Pursuant to section 59(2)(b) of the *Act*, the landlord's application must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the tenants with notice and enough information to know the landlord's claims so that they can properly respond.

Pursuant to section 59(5)(a) of the *Act*, I can refuse to accept an application if it does not disclose a dispute that may be determined. The landlord filed her own application, and, as the applicant, has the burden of proof, on a balance of probabilities, to name the correct parties, use correct legal names, apply for the correct claims, provide sufficient particulars and evidence of her claims, and prove her claims at a hearing on a balance of probabilities.

I informed the landlord that she failed to provide sufficient particulars of her dispute. I could not determine whether the landlord named the correct legal parties. The landlord also repeatedly asked me for legal advice throughout this hearing, which I could not and did not provide, since the landlord was unsure of her own application and the details regarding same.

The landlord filed her application on September 26, 2022, and this hearing occurred on November 21, 2022. The landlord had ample time of almost two months, to know the full details of her application and serve proper notice to the tenants, prior to this hearing, but failed to do so.

I informed the landlord that there is a question as to whether a "tenancy" exists and whether the two respondents named in her application are actually "tenants," pursuant to the *Act*. I notified the landlord that I could only determine residential tenancy claims under the *Act*, where a tenancy relationship exists between landlords and tenants.

The landlord provided affirmed testimony that no tenancy began, no written tenancy agreement exists, tenant SS is not a tenant, tenant BM is a squatter, and she was unsure of the legal names of both tenants. The landlord did not ask for a determination regarding jurisdiction, she did not provide sufficient evidence for me to make that determination, she was unsure what her application was for, she failed to prove service

of her application to the two tenants, and I could not consider the landlord's written evidence.

On a balance of probabilities and for all the reasons stated in this decision, I notified the landlord that her application was dismissed with leave to reapply, except for the \$100.00 filing fee, which was dismissed without leave to reapply. I notified her that she could file a new application, if she wants to pursue her claims in the future. I informed her that I could not issue an order of possession or a monetary order to her, based on the tenants' application to cancel the 10 Day Notice, for the above reasons. She confirmed her understanding of same.

Conclusion

The tenants' entire application is dismissed without leave to reapply

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of the landlord'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: November 21, 2022

Residential Tenancy Branch