



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S MNDCL-S FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a monetary order for recovery of unpaid rent owed by the Tenant pursuant to section 67;
- a monetary order for compensation for monetary loss or other money owed by the Tenant to the Landlord pursuant to section 67;
- authorization to keep the Tenant’s security deposit pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 67.

The Landlord’s agent (“PB”) and a person (“CY”) who purported to be authorized to represent the Tenant’s estate attended the hearing.

Preliminary Matter – Disruption of Hearing by CY

During the hearing, CY was disruptive to the conduct of the hearing by me. Rule 6.10 of the RoP states:

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.

At the outset of the hearing, I made inquiries as to the authority of CY to speak on behalf of the Tenant's estate. He stated he was the husband of the daughter of the Tenant. While I was attempting to make further inquiries to determine whether CY was a legal representative of the Tenant's estate, CY stated the Landlord owed \$35,000.00 for compensation as the Landlord had thrown out the personal possessions of the Tenant and moved someone else into the rental unit. When I explained that I could only deal with the claims made in the Application before me, CY became agitated and started acting in an aggressive, belligerent and hostile manner. I attempted to gain control of the hearing and warn CY that I would mute his phone line if he did not stop talking over me. However, CY continued to speak over me and I made the decision to exclude CY by placing him on mute, where he remained until I was able to obtain information from PB regarding the tenancy and matters relating to service of the Notice of Dispute Resolution Proceeding ("NDRP") for the Application.

I note that CY also challenged my authority to conduct the hearing and stated that matters were being dealt with in Ontario and then later stated he was going to take the matter to the Small Claims Court. I would recommend that CY consult with legal counsel to obtain advice on the authority of a delegate of the Director of the Residential Tenancy Branch ("RTB") to hear applications for dispute resolution filed with the RTB in connection with residential tenancies of rental units located in British Columbia.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding by Landlord

Section 1 of the Act defines tenant as:

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

A landlord who makes an application for dispute resolution to seek unpaid rent and/or damages from the estate of a deceased tenant must serve the legal representative with the notice of dispute resolution proceeding. A legal representative of an estate is a person or persons appointed by a court to act as the executor/executrix or administrator/administratrix. In British Columbia, the Supreme Court of British Columbia has exclusive jurisdiction to grant probate under its general jurisdiction in all civil and criminal matters as stated in the *Supreme Court Act*, and by definition of the court in the *Wills, Estates and Succession Act*, SBC 2009 c. 13 (“WESA”). Its jurisdiction extends to granting probate and administration where the deceased was domiciled in British Columbia or had assets in British Columbia at the date of death (s. 129(1) of WESA). An exception to this exclusive jurisdiction arises where the deceased was a status Indian. In that case, the deceased's estate must be handled pursuant to the “Descent of Property” provisions of the *Indian Act*.

The Landlord named the Tenant as the respondent in the Application. *Residential Tenancy Policy Guideline 43* (“PG 43”) provides guidance on naming parties to an application for dispute resolution. Part D of PG 43 states in part:

D. NAMING AN ESTATE OF A PERSON WHO HAS DIED

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate should be named. *If the deceased is a respondent to an Application for Dispute Resolution, the personal representative should be served.*

The personal representative may be the person named as executor in the deceased's will or the person *who has been approved by the court to administer the estate by way of an estate grant.*

An estate can be named as follows: “John Smith as Personal Representative of the Estate of Mary Jones, Deceased.”

If a personal representative has not yet been approved or an applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be used on the application with an indication that they are deceased (for example, “John Doe, deceased”). At the hearing, the director may amend the Application for Dispute Resolution to reflect the personal representative who is acting for the estate.

Section 64(d) of the Act states:

- 64(3) Subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may
- (a) deal with any procedural issue that arises,
 - (b) make interim or temporary orders, and
 - (c) amend an application for dispute resolution or permit an application for dispute resolution to be amended.

As a delegate of the Director, pursuant to section 64(3)(c) of the Act, I order the name of the respondent in the Application to be amended by adding “, Deceased” after the name of the Tenant.

At the hearing, CY stated he was the ex-spouse of the Tenant's daughter. When I asked if anyone was appointed by the BC Supreme Court as the executor/executrix or administrator/ administratrix of the Tenant's estate, CY stated the Tenant's estate has no money. When I asked where the Landlord obtained the address that was used to serve the Notice of Dispute Resolution Proceeding for the Application (“NDRP”), PB stated it was the address for service that was stated in the Notice for a prior application for dispute resolution (“Prior Application”). In the Prior Application, the Tenant was named as the applicant and the proceeding was brought by the Expedited Hearing Process of the RTB to seek an Order of Possession. It appears the only person who appeared on behalf of the applicant was CY. I have read the decision (“Decision”) of the arbitrator who conducted the hearing for the Prior Application. In the Decision, the arbitrator found that, as the Landlord had re-rented the rental unit, the applicant was not entitled to an Order of Possession for the rental unit.

When I asked, PB stated CY did not provide the Landlord with a copy of the Grant of Probate or Letters of Administration issued by the Supreme Court of British Columbia. I attempted to gather more information regarding the Prior Application but CY's constant disruptions prevented me from gathering sufficient information to make a determination on the identity of the person who made the Prior Application and the authority of that person to act on behalf of the Tenant's estate.

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*].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

Neither the Landlord nor CY submitted a copy of a Grant of Probate or Letters of Administration that appoint a legal representative as the executor or administrator of the Estate. As such, I find, on a balance of probabilities, that CY has not been appointed as a legal representative of the Tenant's estate. With all due respect, I find the arbitrator who heard the Prior Application should have firstly determined whether the CY had the legal authority to speak on behalf of the Tenant's estate and, if he did not, then the Application should have been dismissed on that basis. As the Landlord has not served the NDRP on a legal representative of the Tenant's estate as required by Rule 3.1 of the RoP, I dismiss the Application in its entirety with leave to reapply.

Conclusion

The Application is dismissed in its entirety 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 29, 2022

Residential Tenancy Branch