



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act") in which the Tenant applied for cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 8, 2022 pursuant to section 49.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:41 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. The Landlord's agent ("MH") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that MH and I were the only ones who had called into this teleconference.

Preliminary Matter – Non-Service of NDRP on Landlord

MH stated the Landlord was not served with the NDRP. MH stated the Landlord received an email from the Residential Tenancy Branch that advised of the deadline for submission of evidence for this proceeding and provided the date, time and access code for this teleconference hearing. MH stated the Landlord was not served with any evidence by the Tenant. Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

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.

Based on MH's undisputed testimony, I find the NDRP was not served on the Landlord in accordance with the requirements of Rule 3.1 of the RoP.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most

circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Pursuant to Rule 6.6 of the RoP, the Tenant bears the onus to prove she is entitled to the claims made in the Application.

Rules 7.1, 7.3 and 7.4 of the RoP state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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 the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the hearing within 10 minutes of its commencement, pursuant to Rule 7.3 of the RoP, I dismiss Application without leave to reapply.

MH stated the Tenant abandoned the rental unit on or about September 1, 2022. MH stated the Tenant provided the Landlord with the access code to gain entry into the rental unit and the Landlord has taken possession of the rental unit. As such, it is unnecessary for me to grant the Landlord an Order of Possession pursuant to section 55(1) of the Act.

Conclusion

The Application is without 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 15, 2022

Residential Tenancy Branch