



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: CNR

LL: OPR-DR MNR-DR

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application (“Tenant’s Application”) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated July 4, 2022 (“10 Day Notice”) pursuant to section 46;

The Landlord made one application (“Landlord’s Application”) for:

- an Order of Possession pursuant to sections 46 and 55; and
- a monetary order for unpaid rent under sections 55.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:19 am in order to enable the Tenant to call into this teleconference hearing scheduled for 11:00 am. The Landlord, the Landlord’s husband (“IC”) and one of the owners (“RH”) of the rental unit attended the hearing and they were 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 had been provided in the Tenants’ Notice of Dispute Resolution Proceeding (“Tenant’s NDRP”). I also confirmed from the teleconference system that the Landlord, IC, RH and I were the only ones who had called into this teleconference.

The Landlord stated she received the Tenant’s NDRP by email sometime in July 2022. The Landlord stated she did not give the Tenant permission to serve her by email nor was there any term in the tenancy agreement that permitted the Tenant to serve documents by email. However, as the Landlord acknowledged receipt of the Tenant’s NDRP, I find the Tenant’s NDRP was sufficiently served on the Landlord pursuant to the provisions of section 71(2)(b) of the Act.

Preliminary Matter – Service of Landlord’s Notice of Dispute Resolution Proceeding

The Landlord stated she served the Notice of Dispute Resolution Proceeding for the Landlord’s Application on the Tenant’s door and by email on July 15, 2022. 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.

The NDRP is a special document in which the Landlord is making a monetary claim against the Tenant for unpaid rent. As such, the NDRP must be served in accordance with the provisions of section 89(1) of the Act that states:

- 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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*];
- (f) by any other means of service provided for in the regulations.

Section 89(1) of the Act does not permit the Landlord to serve the NDRP by leaving a copy on the Tenant's door or by email. As such, the Landlord did not serve the NDRP on the Tenant using a method set out in section 89(1) of the Act. Based on the foregoing, I dismiss the Landlord's claim for a monetary order for unpaid rent, with leave to reapply. The Landlord has the option of making a new application for dispute resolution to make her claim unpaid rent.

Preliminary Matter – Removal of Applicant from Landlord's Application

At the outset of the hearing, I noted the 10 Day Notice and the tenancy agreement only stated the Landlord's name whereas the Landlord's application stated the applicants were the Landlord and RH. The Landlord stated RH was a part-owner of the rental unit. The Landlord requested that I amend the Landlord's Application to remove RH as an applicant. Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the Tenant could have reasonably anticipated the Landlord would make a request for an amendment to remove RH as an applicant in the Landlord's Application on the basis that RH was not named in the tenancy agreement or 10 Day Notice was a landlord of the rental unit. As such, I amend, pursuant to Rule 4.2 of the RoP, the

Landlord's Application to remove RH as an applicant. As RH has an interest in the rental unit I allowed RH to attend the hearing as an interested party.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("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.

As such, the Landlord bears the burden of proof it is more likely than not that the 10 Day Notice is valid. The Landlord must meet this burden even if the Tenant does not attend the hearing.

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, the Tenant's Application is dismissed without leave to reapply pursuant to Rule 7.3 of the RoP. As the Tenant was not present at the hearing, I will not consider any of the evidence submitted by the Tenant in advance of the hearing when adjudicating the Landlord's Application pursuant to Rule 7.4 of the RoP.

Issue to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence of the Landlord and, only the details of the submissions and/or arguments of the Landlord relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the claims made in the Landlord's Application and my findings are set out below.

The Landlord submitted into evidence a signed copy of a tenancy agreement dated January 16, 2020 ("Tenancy Agreement") between the Landlord and the Tenant. The Tenancy Agreement states the tenancy commenced on January 15, 2020, for a fixed term ending January 31, 2021, with rent of \$1,600.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$800.00. The Landlord stated the rent was increased to \$1,628.00. The Landlord stated the Tenant paid the security deposit and that she was holding it in trust for the Tenant. Based on the undisputed testimony and evidence of the Landlord, I find there was a tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Landlord's Application.

The Landlord submitted into evidence a copy of the 10 Day Notice and stated it was served on the Tenant's door on July 4, 2020. Based on the undisputed testimony of the Landlord, I find the 10 Day Notice was served on the Tenant pursuant to the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenant has rental arrears of \$1,628.00 as of July 1, 2022. The Landlord stated the Tenant abandoned the rental unit on or about October 5, 2022. The Landlord stated the Tenant has not made any payments of rent since July 1, 2022 and the Tenant now owes \$6,512.00 for rental arrears.

Analysis

Sections 46(1) through 46(4) of the Act state:

- 46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than *10 days after the date the tenant receives the notice*.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

The Landlord stated she served the 10 Day Notice on the Tenant's door on July 4, 2022. Pursuant to section 90 of the Act, I find the Tenant received the 10 Day Notice on July 7, 2022, being three days after it was posted on the Tenant's door. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or July 12, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the Residential Tenancy Branch disclose the Tenant made his application on July 8, 2022. Accordingly, the Tenant made his application within the five-day dispute period.

Although the Tenant made the Tenant's Application on time, as noted above, the Tenant's Application has been dismissed as the Tenant did not attend this hearing. . However, as noted above, the Landlord nevertheless has the obligation to demonstrate that the 10 Day Notice was effective when it was served on the Tenant.

Section 52(1) of the Act 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) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

As the Tenant already vacated the rental unit prior to this hearing, the Landlord does not require an Order of Possession. As noted above, I have dismissed the Landlord's claim for monetary compensation for unpaid rent as she served the 10 Day Notice on the Tenant's door rather than a method permitted by section 89(1) of the Act. I have nevertheless reviewed the 10 Day Notice and found that it was made on an older Form RTB-30 that does not comply with the current form and content requirements of section 52 of the Act. The form RTB-30 used by the Landlord is only 2 pages long while the current form RTB-is 3 pages long and the new form provides significantly more information on the rights of tenants to dispute a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities. As such, I find that, even if the Tenant was still occupying the rental unit and the Landlord had served the 10 Day Notice by a method permitted by section 89(1) of the Act, I would not have found the 10 Day Notice to be effective. As such, the Landlord would not have been entitled to an Order of Possession and a monetary order for unpaid rent on the basis as the 10 Day Notice was not effective when it was served on the Tenant.

The Landlord's Application is dismissed with leave to reapply to seek a monetary order for unpaid rent. As such, the Landlord has the option of making a new application for dispute resolution to seek monetary compensation for unpaid rent.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord's claim for an Order of Possession is dismissed. The Landlord may reapply for monetary compensation for unpaid rent.

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: December 3, 2022

Residential Tenancy Branch