



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, MNDCT, RR, RP
Landlord: OPR-DR, MNR-DR, FFL

Introduction

On August 27, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- compensation for monetary loss or other money owed;
- reduction in rent for repairs not provided;
- for repairs made to the rental unit.

The Landlord filed an Application, joined to the Tenant’s initial Application, on October 5, 2022, for:

- an Order of Possession in line with the 10-Day Notice;
- compensation for unpaid rent
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 16, 2023. Both parties attended the teleconference hearing.

Preliminary Matter – Tenant’s service of Notice of Dispute Resolution Proceeding and evidence

The *Residential Tenancy Branch Rules of Procedure* sets out the rules for parties’ submissions and provision of evidence to the Branch, and each other. This sets timelines for doing so. The *Act* sets out acceptable methods for service of documents.

The Tenant in the hearing stated they were not aware they received the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch. They were without power in the rental unit, and without access to internet because “the internet box was tampered with.” It was “days later” after they contacted the internet service provider that they discovered the email from the Residential Tenancy Branch with the Notice of Dispute Resolution Proceeding attached.

When I asked for clarification and more detail, the Tenant stated their power was “sporadic” because someone would come and turn the power on and off. The Tenant did not specify a start date or end date when they were completely without power or internet within the rental unit. Rather, they re-stated that the power would be on, and then off, as evidenced by the digital oven clock that would be flashing when they returned to their home.

The Landlord in the hearing stated they did not receive the Notice of Dispute Resolution Proceeding, nor the Tenant’s evidence in advance. The Landlord confirmed they received no form or notification from the Tenant about their Application or about the hearing.

The record of communication at the Residential Tenancy Branch shows the Branch sent the Notice of Dispute Resolution Proceeding to the Tenant via email on September 13, 2022. This message contains the following instructions:

Prepare Your Notice of Dispute Resolution Proceeding Package

You must serve **separate** Notice of Dispute Resolution Proceeding packages to **[the Landlord]** within three calendar days of this email, or no later than **Sep 16, 2022**.

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding
2. All evidence submitted with this application
3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114 fact sheet

Serve Your Notice of Dispute Resolution Proceeding Package to the Respondent(s)

You **must** serve the Notice of Dispute Resolution Proceeding package in one of the following ways and then provide your associated proof of service to the Residential Tenancy Branch via the [Dispute Access site](#) using your dispute access code: **[code]**. Or you may submit these documents at the Residential Tenancy Branch or at any Service BC Centre.

Canada Post Registered Mail

1. Prepare an envelope for each respondent
2. Include 1 copy of the Notice of Dispute Resolution package in each envelope
3. Send the package(s) by Canada Post Registered Mail - Package(s) must be post marked on or before **Sep 16, 2022**
4. Provide the registered mail receipt(s) and tracking information to the Residential Tenancy Branch

In person

1. Print a Notice of Dispute Resolution package for each respondent
2. Serve each respondent by hand on or before **Sep 16, 2022**
3. You must be able to provide proof that you have served in person . . .

Email Service

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. You can use the [Address for Service](#) (RTB-51) form to prove that the other party agreed to receive documents by email. If the other party has not agreed to email service, you can [apply online for substituted service](#) using your dispute access code: [code] or submit a [paper application](#) to the Residential Tenancy Branch.

1. Prepare an Email to be sent to each respondent
2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before **Sep 16, 2022**
3. Provide proof that you have an agreement with the other party to serve documents by email

Learn more about [serving your Notice of Dispute Resolution Proceeding package](#).

The Tenant in the hearing stated they did not send the Notice of Dispute Resolution Proceeding to the Landlord.

The *Act* requires proper service in line with administrative fairness in which a party's legal rights and obligations are challenged. I find the Residential Tenancy Branch delivered the

Notice document to the Tenant in due course; however, the Tenant failed to serve it to the Landlord as the *Act* requires.

Though the Tenant claimed they had issues with the power in their rental unit, and also internet, I find this does not leave them completely out of touch without the ability to communicate. The Tenant did not state whether they use a mobile device such as telephone on which they could process and receive email. Given the manner in which the Tenant provided their evidence to the Residential Tenancy Branch – by way of individual photos of individual pages in .jpg format – I find it more likely than not that the Tenant owns or has access to a mobile device. They used that for processing their evidence in advance of their Application.

More importantly, I find electrical service interruptions or internet service interruptions do not excuse the Tenant from the important step of providing Notice of this hearing to the other party. I find there was no sustained outage over a significant period of time that left the Tenant unable to receive emails. The Tenant did not describe dates or times, rather, it was on-again-off-again in nature. I find the Tenant not credible in their description of this service interruption as a reason why they did not receive the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch.

Additionally, there is no record of the Tenant presenting this dilemma to the Residential Tenancy Branch, to ask for assistance on any communication challenge they had when making this Application.

I dismiss the Tenant's Application for Dispute Resolution for the reason that they did not complete service of the Notice of Dispute Resolution Proceeding to the Landlord. The Landlord was not aware of the Tenant's Application, and that violates the tenets of basic administrative fairness. Any consideration of the Tenant's Application I may make in this matter would be prejudicial to the Landlord who was not aware of the details of the Tenant's Application, not having the required knowledge to respond to the issues.

For the reasons above, I dismiss the Tenant's Application in its entirety. They are not entitled to recovery of the Application filing fee.

Preliminary Matter – Landlord’s service of Notice of Dispute Resolution Proceeding and evidence

The Landlord stated they attempted to deliver the Notice of Dispute Resolution Proceeding as well as their evidence in person to the Tenant. According to the Landlord, the Tenant refused to accept the documents from the Landlord. The Landlord then sent registered mail for the purpose of service, on September 19, 2022. Eventually, this piece of registered mail was returned to the Landlord.

In their evidence, the Landlord provided an image of the envelope they used for this purpose. This bears the stamp from the post office on September 19, 2022, and the delivery notation that the item was being returned to the Landlord at their address. The tracking number found on the envelope reveals that the item was delivered to the recipient (*i.e.*, the Tenant) on September 26, a final notice was delivered on October 5, and the item was sent for return to the sender on October 12, 2022.

The Tenant in the hearing stated they refused this in-person service from the Landlord and instructed them to send it: “Okay, go ahead and send it in the mail”. They received no notification in the mail. Later, their upstairs neighbour came with the delivery card, stating that they took that card into their own home. By the time the Tenant took this card to the post office to pick up the registered mail, that piece of registered mail was returned to the Landlord. The Tenant estimated the date to be September 24, 2022.

The Tenant concluded they could not receive the piece in the mail from the Landlord because their mail delivery was tampered with by others.

I find the Landlord completed service as required in the *Act*, and this within the timeline provided to them by the Residential Tenancy Branch. The Tenant refused service; however, the Landlord completed service by registered mail, having sent that document on September 19, 2022 after receiving the information from the Residential Tenancy Branch on September 16, 2022.

I find the Tenant not credible on their account of not receiving the postal notification of registered mail. They did not provide the date on which they visited the post office to retrieve the item, only to find it had been returned to the sender. Given the Tenant’s account about their connectivity in the rental unit (discussed above), and their initial refusal to accept the item from the Landlord in person, I find it more likely than not that the Tenant had the registered mail information yet did not retrieve the item from the post office. As well, the registered mail

tracking information shows a second notification provided to the addressee on October 5, 2022.

For the purposes of this important piece of service, I deem the Tenant to be served on September 24, 2022 – this is the fifth day after the Landlord mailed the item to the Tenant on September 19, 2022, applying s. 90(a) of the *Act*. This includes the Notice of Dispute Resolution Proceeding document, as well as the basic evidence the Landlord prepared in advance for this hearing.

Issues to be Decided

Is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts in the rental unit, pursuant to s. 55(1.1) and/or s. 67 of the *Act*?

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

Background and Evidence

In their evidence, the Landlord provided a copy of the tenancy agreement. The set amount of rent, as set out in the agreement, was \$1,400 per month, payable on the first of each month. The Tenant paid a \$700 security deposit at the start of the tenancy. The tenancy started on June 1, 2022.

The Landlord issued the 10-Day Notice on August 20, 2022, for the set end-of-tenancy date of August 30, 2022. This was for the unpaid rent amount of \$1,400 listed as payable on August 1. The Landlord wrote on the document to state the Tenant “will make the payment for rent on August 10, 2022.” They “approached [the Tenant] for rent on August 17, 2022. [the Tenant] said [they] will give rent on Friday 19 [August] 2022.” At the time the Landlord served the 10-Day Notice, they had not received any rent from the Tenant.

The Landlord indicated on the document that they served this to the Tenant in person on August 20, 2022. Also in the Landlord’s evidence is a “Proof of Service” in which they set out

how they served the document directly to the Tenant on that date. A resident of the adjacent unit witnessed this transaction and signed the form to indicate that.

In the hearing the Tenant acknowledged receiving this document in person from the Landlord. They took issue with the Landlord seeking to end their tenancy, when it was within their knowledge that other rental property residents also had rent amounts owing.

In the hearing, the Landlord provided that, instead of the Tenant paying that rent amount within 5 days as provided for on the 10-Day Notice instructions, they did not pay. Only later did the Landlord learn of the Tenant's Application to the Residential Tenancy Branch to dispute the 10-Day Notice.

The Landlord did not receive rent from the Tenant in the subsequent months, through to January 2023. On September 26, the Tenant apparently messaged to the Landlord's son to advise they would be moving out in October 2022; however, that did not happen.

The Tenant summed up the difficulty they would have if ending this tenancy, due to higher rents required everywhere. They described their issue with their child who was injured; as they allege this was because of the lack of repair of a fence in the backyard at the rental unit property. The Tenant also raised other issues of heat within the rental unit, as controlled by another resident at the rental unit property. The Tenant addressed the issue of compensation for their child who was injured, as well as their application for a reduced rent amount because of repairs that the Landlord did not undertake.

Analysis

The parties agreed on the basic terms of the tenancy agreement: the rent amount of \$1,400, payable on the first of each month. I therefore find this basic term to be fact. I also find the Tenant paid a security deposit amount of \$700 at the start of the tenancy.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations of the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy if rent is unpaid “on any day after it is due”, with an end-of-tenancy date that is “not earlier than 10 days after the date the tenant receives the notice.”

In this dispute the Landlord issued the 10-Day Notice on August 20, 2022. The Tenant acknowledged in the hearing that they did not pay rent from August 2022 onwards. I find the Tenant raised other issues about the state of the rental unit and their child’s alleged injury; however, the Tenant did not pledge to pay rent amounts or indicate that non-payment of rent was a difficulty for the Landlord.

I conclude the Tenant did not pay the full rent amount as required. I find the tenancy agreement was explicit on the full amount of rent payable by the Tenant each month. The *Act* s. 26 applies and the Tenant had no authorization to withhold rent. Nor did they have any authority from the tenancy agreement. I find the Tenant breached s. 26 of the *Act*, and further breached s. 46(4) by not paying the full amount of the overdue rent.

Under s. 55 of the *Act*, when the Tenant’s Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements of s. 52 regarding form and content, I must grant a landlord an order of possession.

I dismissed the Tenant’s Application above because of their lack of service of the Notice of Dispute Resolution Proceeding.

On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

The *Act* s. 55(1.1) specifies that I must grant repayment of unpaid rent. This amount is \$1,400. By s. 67 of the *Act*, I grant the Landlord a further award of \$7,000 for the following months of unpaid rent. The total owing to the Landlord is \$8,400.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord here has established a claim of \$8,400. After setting off the \$700 security deposit, there is a balance of \$7,700. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$7,700 as compensation for the August 2022 through to January 2023 rent amounts.

The Landlord was successful on their Application; therefore, I grant reimbursement of the Application filing fee to them.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, without leave to reapply.

I grant an Order of Possession to the Landlord, effective **TWO DAYS** after they serve it to 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 may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$7,800, pursuant to s. 55(1.1), s. 67, and s. 72 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: January 18, 2023

Residential Tenancy Branch