



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application filed by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55.

The applicant/tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:49 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and testified she was not served with the tenant's Notice of Dispute Resolution Proceedings or application for dispute resolution. She was sent a copy of the Notice of Dispute Resolution Proceedings by an information officer at the Residential Tenancy Branch after requesting a copy by email.

Rule 7.3 of the Rules of Procedure also provides that 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. Rule 7.4 states that 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 to present evidence, any written submissions supplied may or may not be considered. Only the evidence referred to by the landlord was used in this decision.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Background and Evidence

The tenant did not attend this hearing to present any evidence regarding the merits of her application for me to consider.

The landlord testified that on August 16, 2022, she served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by sliding a copy in the tenant's mailbox. While doing this, somebody from the other side of the door grabbed it from her hand.

The landlord testified that the rental unit is an entire house and there are currently 7 people living in the house. The tenant has not been paying utilities and on the tenancy agreement utilities are the responsibility of the tenant. The landlord has sent the tenant multiple requests to pay the utilities together with invoices from the utility companies via text and the tenant has not paid them. As of August 16th, the utilities are \$1,300.00.

The landlord testified that the tenant has paid rent for the month of January 2023, but not any utilities.

Analysis

The Residential Tenancy Branch Rules of Procedure 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].

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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];*
- (f) by any other means of service provided for in the regulations.*

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the Act. (Excerpt reprinted below)

PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

Rule 7.3 of the Rules of Procedure also provides that 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.

The tenant did not attend this hearing scheduled by conference call at 9:30 a.m. As she did not attend, she did not provide any evidence to me that she served the Notice of Dispute Resolution Proceedings upon the landlord. The landlord gave undisputed testimony that the tenant never served her with the Notice of Dispute Resolution Proceedings. Consequently, I dismiss the tenant's application without leave to reapply in accordance with rule 7.3.

Section 55(1) states:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the landlord's notice to end tenancy and I find it complies with the form and content provisions of section 52. It is signed and dated, gives the address of the rental unit, states an effective date and grounds for ending the tenancy and is in the approved form. The landlord is granted an Order of Possession pursuant to section 55(1). As the effective date noted on the notice to end tenancy has passed, the landlord is granted an Order of Possession effective January 31, 2023, since the tenant has paid rent up until that date.

Section 55(1.1) states:

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The unpaid utilities of \$1,300.00 are treated as unpaid rent in accordance with section 46(6) of the Act. As such, I grant the landlord a monetary order for \$1,300.00 against the tenant in accordance with section 55(1.1).

Conclusion

I grant the landlord and Order of Possession effective January 31, 2023. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I award the landlord a monetary order in the amount of \$1,300.00.

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: January 13, 2023

Residential Tenancy Branch