



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ORCA REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on December 9, 2022, seeking cancellation of the Two-Month Notice to End Tenancy for Landlord's Use (the "Two-Month Notice"). The Tenant additionally seeks the Landlord's compliance with the legislation and/or tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) on January 20, 2023. In the conference call hearing I explained the process and provided the attending parties the opportunity to ask questions. Both the Landlord and the Tenant attended the hearing at the scheduled date and time.

Preliminary Issue – Tenant's service of the Notice of Dispute Resolution

At the outset of the hearing, the Tenant set out that they notified the Landlord of this hearing via the Notice of Dispute Resolution Proceeding, sent to the Landlord using registered mail. The Tenant provided a post office registered mail receipts dated December 16, 2022 and two mailing labels bearing tracking numbers. The Tenant set out that these registered mail packages included copies of their document evidence they intended to rely on in this hearing.

The Landlord in the hearing stated they did not receive the Notice of Dispute Resolution Proceeding and Tenant's evidence. They received two registered mail envelopes containing blank pages. The Landlord provided four images of these two envelopes, showing blank pages inside. The images bear the registered mail labels bearing tracking numbers that match to those provided by the Tenant in their evidence. The envelopes do not have sender information or a return address.

The Landlord also provided a written statement dated January 10, 2023, in which a witness described their observation of the Landlord opening the envelopes. The witness wrote: "I can verify that the content of these envelopes were blank sheets of paper, approximately 15 of them in each envelope (two envelopes)." This witness signed the statement above the name of the Landlord's property management agency.

The Landlord also set out that they received a reminder about the hearing via email from the Residential Tenancy Branch. The record at the Residential Tenancy Branch shows this email sent to both parties on January 6, 2023. The Landlord stated this left them with less than one week to prepare evidence for submission. The record shows the Landlord contacted the Residential Tenancy Branch on January 6. On January 9 the Landlord disclosed to the Residential Tenancy Branch that "[the Tenant] sent them blank paper by registered mail", and at that time the Residential Tenancy Branch sent a copy of the Notice of Dispute Resolution Proceeding to the Landlord. On January 11, the Landlord called to inquire how to provide evidence directly to the Residential Tenancy Branch and on that same date provided the document showing blank pages inside the envelopes.

When queried on this mailing of blank pages in the hearing, the Tenant replied stating this was "speculation, based on [the Landlord] and management" who were "trying to pull the wool over someone's eyes."

The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution:

a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director."

The *Act* s. 89(1) gives the rules for service of the application for dispute resolution. This is by leaving a copy with the person or their agent or sending a copy via registered mail.

Additionally, the *Residential Tenancy Branch Rules of Procedure* that are crafted to ensure a fair process; these specify the documents to be served by the applicant (here, the Tenant) to the respondent (here, the Landlord). These are: the Notice of Dispute Resolution Proceeding provided when applying; the Respondent Instructions for Dispute Resolution; a process fact sheet; and other evidence submitted by the applicant.

I find the Tenant did not provide a copy of the Notice of Dispute Resolution Proceeding to the Landlord. The Tenant also did not serve the evidence they intended to rely on for this hearing. I make this finding for the following reasons:

- The Landlord gave the same information in the hearing that they showed in the document they sent containing images of the same. The Landlord is consistent in this account, stated under affirmed oath.
- The Landlord's description of their learning of this hearing directly from the Residential Tenancy Branch is borne out by the record at Residential Tenancy Branch showing the Landlord's contact to the branch on January 6, 2023 after receiving an evidence submission reminder.
- I give weight to the Landlord representing the agency that is the Landlord's property manager. The witness who signed the document made the indication they are working for that agency. I find it less likely in fact that the Landlord would attempt to perpetrate a fraud by creating the images and giving deliberately false testimony in the hearing when they are representing the property management agency, essentially owning full accountability by representing that agency in this legal proceeding.
- The envelopes bore no return address, meaning the Landlord could not definitively link this to the matter of their issuing the Two-Month Notice to the Tenant. The Landlord was thus unable to inquire directly to the Tenant on the envelopes or their contents.

The Tenant provided evidence of *service*; however, the *Act* s. 59(3) specifies that the party must provide the copy of their Application (*i.e.*, the Notice of Dispute Resolution Proceeding) within a strict timeframe. The Tenant has not offset the burden of proof to show definitively that they served the required documents to the Landlord as notification of this hearing.

Moreover, I find the Tenant's actions here equate to the categorical definition of fraud: a wrongful deception (to both the Landlord and the Residential Tenancy Branch) intended to result in personal gain. I find this was an attempt by the Tenant to ensure the Landlord would not attend the hearing, thus increasing the chance that the Landlord would not provide testimony or evidence in answer to the Tenant's claims of the Landlord's bad faith in ending the tenancy via the Two-Month Notice. My finding here is also built on the affirmed testimony of the Landlord in the hearing that the Tenant posted a rental unit ad for this very same rental unit at an increased amount of rent, containing the epithet "slum lord". I also considered the Tenant's other statements about the Landlord's management of the rental unit; I find these statements reveal the Tenant's enmity for the history of this tenancy since at least early 2022.

In sum, the Tenant did not provide a copy of the Notice of Dispute Resolution Proceeding – that document that is generated when a person applies for dispute resolution – 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 dismiss the Tenant's Application for Dispute Resolution for this reason, without leave to reapply.

The *Act* s. 55 provides that I must grant to the Landlord an Order of Possession of the rental unit if I dismiss the Tenant's Application. This is contingent on the document in question – here, the Two-Month Notice – complying with the s. 52 requirements for form and content. On my review of the Two-Month Notice in the record (images provided by the Tenant with their Application to the Residential Tenancy Branch) I find the document complies with s. 52.

I so grant the Landlord an Order of Possession in line with the Two-Month Notice, effective January 31, 2023 at 1:00pm.

In the hearing, the Tenant inquired on a “concession” should they have to move out from the rental unit by January 31, 2022. I am not aware of any discussion between the parties regarding a final end-of-tenancy date on January 31, 2023. The Tenant already received the equivalent of one month's rent for the month of January 2023. There are no grounds to award Tenant additional compensation beyond s. 51 of the *Act*.

Because this tenancy is ending, there will be no further landlord-tenant relationship. I find there is no need for a determination on the Landlord's compliance with the legislation and/or tenancy agreement.

The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee.

Conclusion

I dismiss the Tenant's Application in its entirety, without leave to reapply.

For the reasons above, I grant an Order of Possession to the Landlord, effective 1:00 p.m. on January 31, 2023. The Landlord must serve this Order of Possession 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 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 23, 2023

Residential Tenancy Branch