



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, AAT, PSF, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order for the landlord to allow the tenant or his guests to access the rental unit, pursuant to sections 30 and 70;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Section 55(1) of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Tenants DM (the tenant) and HL and landlord JK (the landlord) attended the hearing. The landlord's agent KS and witness SR also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue - Amendment

The application names respondents the landlord, the property management company TRG Residential Group Realty and Rancho Management Services.

The landlord and KS agreed that TRG Residential Group Realty represents the landlord.

All the parties agreed that Rancho Management Services represents the strata corporation where the rental unit is located. SR represents Rancho Management Services.

Section 1 of the Act states that a tenancy agreement is between a landlord and a tenant.

Pursuant to section 64(3)(a) of the Act, I have amended the application to exclude Rancho Management Services, as this party is not a landlord nor a tenant.

Preliminary Issue – Service

The tenant affirmed he mailed the notice of hearing via registered mail. The landlord confirmed receipt of the notice of hearing. KS and the landlord did not raise issues about service of the notice of hearing.

Based on the undisputed testimony, I find the tenants served the notice of hearing in accordance with section 89(1) of the Act.

The tenant stated he served the evidence in person on January 18, 2022. Later the tenant testified he attached the evidence to KS's front door.

The landlord and KS said they did not receive the tenants' evidence.

The landlord affirmed he mailed the response evidence via registered mail in a single package addressed to both tenants on November 18, 2022.

The tenant stated he did not receive the response evidence.

Section 89 of the Act states:

- (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].

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. **Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.**

(emphasis added)

Based on the landlord's more convincing testimony, I find the tenants did not serve the evidence.

Based on the landlord's testimony, I find the tenants were not served in accordance with the Act, as both of them were served together. As noted above, each respondent must receive the application and supporting evidence.

As such, I excluded all the evidence submitted by both parties.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Notice, the continuation of this tenancy and the order for the landlord to comply with the Act are not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice and the order for the landlord to comply with the Act. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy and the order for the landlord to comply with the Act, which will be decided upon.

Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the Notice?
2. An order for the landlord to comply with the Act?
3. An authorization to recover the filing fee?

If the tenants' application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on May 02, 2022. Monthly rent is \$2,150.00, due on the first day of the month. The landlord collected and currently holds in trust a security deposit of \$1,075.00.

Both parties agreed the tenants received the Notice dated October 07, 2022 on October 07, 2022. The tenants submitted this application on October 10, 2022 and continue to occupy the rental unit.

The tenant testified the Notice does not indicate a reason to end the tenancy, as none of the 18 boxes that indicate the possible reasons to end a tenancy were checked. KS said that one of the boxes was checked, but he does not recall which one.

The tenants are seeking an order for the landlord to comply with the Act, as the landlord and the strata are harassing the tenants because of their service dog. The tenants would like the landlord and the strata to stop harassing them.

The tenants have had a service dog since August 2022. The tenant affirmed the landlord has been harassing the tenants by requesting a pet deposit and threatening to fine the tenants. The tenant stated he had to stop working because of stress: "there's a lot of stuff, but what can I say? I lost work hours and sleep over this for many months".

The tenant believes the strata pressured the landlord to serve the Notice and the strata held a meeting with the landlord about the service dog, but the landlord and the strata did not invite the tenants to attend the meeting.

The tenant testified his service dog is not certified under the British Columbia Service Dog Act (the Service Dog Act) and that it is voluntary to have a service dog certification in British Columbia.

The tenant said that the British Columbia Human Rights Act (the Human Rights Act) prevails over any other law and that section 10 of the Human Rights Act allows the tenant to have a service dog that is not certified under the Service Dog Act.

The landlord affirmed that he asked the tenants for a pet deposit and he did not harass the tenants or threaten to fine the tenants.

Strata agent SR stated the strata informed the landlord and the tenants that the strata bylaws do not allow pets, but the strata did not harass the tenants. The strata notified the tenants and the landlord about bylaw infractions in writing and did not use offensive language.

The tenant testified he did not receive communication from the strata.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

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.

Notice

Per Rule of Procedure 6.6, the landlord has the onus to substantiate the Notice.

Section 52 of the Act states:

- 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 noted in the section 'Preliminary Issue – Service', all the evidence is excluded.

As a copy of the Notice was not accepted into evidence, I can not confirm if the Notice is in accordance with section 52 of the Act. Thus, I find the landlord failed to substantiate the Notice. Accordingly, I cancel the Notice.

I note that I am not making any findings about the merits of the Notice.

Harassment

Per Rule of Procedure 6.6, the tenants have the onus to prove that the landlord failed to comply with the Act.

The parties offered conflicting testimony about harassment. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenants did not provide any accepted documentary evidence to support their claim. The tenants did not call any witnesses.

The tenant's testimony about harassment was vague. The landlord denied that he harassed the tenants. SR's testimony was detailed and convincing.

Asking for a pet deposit and serving bylaw infraction letters is not harassment.

I find the tenants failed to prove, on a balance of probabilities, that the landlord failed to comply with the Act. Thus, I dismiss the tenants' claim for an order for the landlord to comply with the Act.

I encourage both parties to carefully read the Service Dog Act.

Filing fee

As the tenants were partially successful in this application, pursuant to section 72 of the Act, I authorize the tenants to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment.

Conclusion

The Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a), the tenants are authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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: February 27, 2023

Residential Tenancy Branch