



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, 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 tenant applied for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The respondent (landlord) called into this teleconference at the date and time set for the hearing of this matter. Although I waited until 9:46 am to enable the applicant (tenant) to connect with this teleconference hearing scheduled for 9:30 am, the applicant did not attend. The landlord was 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 Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only persons who had called into this teleconference.

The landlord confirmed receipt of the tenant's notice of hearing and the evidence (the materials) via email and that she had enough time to review the materials. The landlord served the response evidence via email to the tenant's email address used by the tenant to serve the materials (recorded on the cover page of this decision) on May 23, 2023. The landlord communicated with the tenant during the tenancy using the same email address.

Based on the landlord's convincing testimony, I find the parties served the materials in accordance with section 89(1) of the Act.

Preliminary Issue – Application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

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 that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the applicant (tenant), I order the tenant's application for an order for the landlord to comply with the Act dismissed without leave to reapply.

Upon further consideration, I also dismiss without leave to reapply the tenant's application for an authorization to recover the filing fee, as the tenant did not attend the hearing.

Relying on *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy when a tenant does not appear to present their application to cancel the Notice:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

I note that section 55 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.

Issues to be Decided

Is the tenant entitled to an order for the cancellation of the Notice?

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

Background and Evidence

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

The landlord affirmed the ongoing tenancy started on February 01, 2021. Monthly rent of \$1,250.00 is due on the first day of the month. The landlord collected and holds in trust a security deposit of \$750.00.

The landlord stated she served the undated Notice on April 18, 2022 by email. The tenant submitted a copy of the unsigned Notice into evidence. The landlord does not know why the Notice is not dated and signed.

The landlord is seeking an order of possession.

Analysis

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.

Based on the copy of the Notice provided, I find the Notice does not comply with section 52(a), as it is not dated and signed. Accordingly, I cancel the Notice.

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

Conclusion

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

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: June 13, 2023

Residential Tenancy Branch