



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, OLC, OPU, FF

Introduction

This hearing dealt with applications by the Tenant and the Landlord. The Tenant applied for an order to set aside a notice to end tenancy, for more time to do so and for the recovery of the filing fee. The Tenant also applied for an order directing the Landlord to comply with the *Act*. The Landlord applied for an order of possession pursuant to a Notice to End Tenancy for nonpayment of utilities and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the Tenant has applied for an order for the Landlord to comply with the *Act*. As this section of the Tenant's application is unrelated to the main section, which is to cancel the 10 day notice, I dismiss this section of the Tenant's claim, with leave to reapply.

Accordingly, this hearing only dealt with the Tenant's application to set aside the notice to end tenancy, for more time to do so and the Landlord's application for an order of possession.

Service of Notice of Dispute Resolution Proceeding

I find that Landlord was served on October 18, 2024, by registered mail in accordance with section 89(1) of the *Act*, the fifth day after the registered mailing.

I find that Tenant was served on October 18, 2024, in person, in accordance with section 89 of the *Act*.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the *Act*.

Evidence from the Landlord, was received by the Residential Tenancy Branch on October 16, 2024. The Landlord agreed that he had not served the Tenant with a copy of his evidence. Since the Tenant was not served with the Landlord's evidence, it was not used in the making of this decision.

Issue(s) to be Decided

Did the Landlord serve a valid Notice to End Tenancy?
Is the Landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy started in September 2022. The monthly rent is \$2,850.00 payable on the first of each month and does not include utilities.

On October 04, 2024, the Landlord served the Tenant with a ten day notice to end tenancy for nonpayment of Utilities in the amount of \$504.87, by posting the Notice on the front door of the rental unit. The Landlord testified that he had not served the Tenant with a demand letter for the payment of utilities, prior to serving the Tenant with the notice to end tenancy,

The Tenant filed an application to dispute the Notice on October 15, 2024. The Tenant testified that she was out of town at the time the Notice was posted and accordingly was late in filing her application to dispute the Notice.

Analysis

Section 46(6) of the Residential Tenancy Act, addresses Notices to End Tenancy for Non Payment of Utilities and states as follows:

If

(a)a tenancy agreement requires the Tenant to pay utility charges to the Landlord, and
(b)the utility charges are unpaid more than 30 days after the Tenant is given a written demand for payment of them,
the Landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In this case the Landlord agreed that the Tenant was not served with a 30-day demand letter to pay utilities. Accordingly, the Notice to End Tenancy is set aside, and the tenancy will continue.

Are the parties entitled to recover the filing fee for their application?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

As the Landlord was not successful in their application, I find that he is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Notice to End Tenancy is set aside, and the tenancy will continue until it ends in accordance with the Act.

I grant the Tenant a Monetary Order in the amount of **\$100.00** as follows:

Monetary Issue	Granted Amount
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$100.00

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: November 08, 2024

Residential Tenancy Branch