



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes OPC, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlords' two applications pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for Unpaid Rent and an order of Possession for Cause pursuant to section 55;
- a monetary order for unpaid utilities and a monetary order for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties (one landlord and two tenants) attended at the hearing and were given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter: Service of Documents

The landlord present at the hearing ("the landlord") provided evidence that a 10 Day Notice to End Tenancy for Unpaid Utilities ("the 10 Day Notice") was served to the tenants on February 19, 2015 by posting the notice on the tenants' rental unit door. The landlord provided evidence that a 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") was also served to the tenants on February 19, 2015 by posting the notice on the tenants' door. I find both the 10 Day Notice and the 1 Month Notice deemed served to the tenants on February 22, 2015, 3 days after their posting.

The tenants testified that they did not receive the landlord's Application for Dispute Resolution and Notice of Hearing package until April 9, 2015, 2 business days prior to this hearing. While the landlord claimed that he sent the hearing package shortly after he filed his application, the landlord was unable to provide documentary evidence, in the form of a receipt or tracking number, showing that the tenants were served with the Application for Dispute Resolution hearing package. The landlord testified that he

believed that his wife had sent a registered mail package and that the tenants refused to pick it up. He had no corroborating evidence nor was his wife available to testify.

The tenants testified that they had received other materials by registered mail from the landlord, including a letter with respect to their security deposit. The tenants both provided sworn testimony that they received no notice of hearing prior to April 9, 2015. The tenants also testified, supported by documentary evidence, that they contacted the Residential Tenancy Branch on April 9, 2015 to advise that they had received the landlord's materials on that day and were not prepared to proceed. I find that the tenants were not sufficiently served with the landlord's Application for Dispute Resolution hearing package in a reasonable amount of time to allow them to respond to the landlords' applications.

Preliminary Matter: Tenants' Adjournment Application

This hearing was convened as a result of two combined applications by the landlords. The landlords applied for an order of possession and a monetary order for unpaid utilities based on a direct request application. The landlords also applied for an order of possession for repeated late payment of rent and rental loss. The direct request application was adjourned to a participatory hearing and joined with the landlords' application for dispute resolution hearing.

On attending the hearing, the tenants sought an application to adjourn the hearing. Their application was based on an inability to have sufficient time to respond to the landlords' application. The tenants argued that they required an adjournment to submit further evidence in response to the landlord's application. The landlord opposed the application for an adjournment generally. I note that all parties testified that the tenants have vacated the rental unit and *an order of possession is no longer an issue in this matter.*

Rule 6 of the Dispute Resolution Rules of Procedure states that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing". In this case, the tenants have both provided sworn testimony that they received the materials and notice of this hearing 2 business days before the date of the hearing. Therefore, the tenants were unable to make an application for an adjournment prior to the hearing itself.

The criteria provided for granting an adjournment, under Rule 6.4 of the Rules of Procedure are;

- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

The tenants testified that they require time to provide materials in response to the landlord's claims. I find that further materials to weigh the evidence of each party will only provide more clarity with respect to this dispute, serving to meet the objectives of the dispute resolution process. It is integral to the dispute resolution process to ensure that both parties have a fair opportunity to be heard, both providing evidence and making submissions in a prepared and considered way. I have found that the tenants have not had sufficient notice of the dispute resolution hearing to present any meaningful response to the claim.

I find that the landlord has been neglectful in both providing the required documents to the tenants and providing proof of any service of documents to the tenants. Pursuant to the *Residential Tenancy Act*, Residential Tenancy Policy Guideline No. 12 and the Rules of Procedure Rule 3.5, a party must be prepared to prove to the satisfaction of the arbitrator the service of documents essential to their application. The landlord was, at least, unprepared to prove the elements of service of documents.

The landlord did not provide any submissions to evidence that the adjournment of this matter would cause him undue prejudice or hardship. I find the landlord would not be significantly prejudiced by a delay in this matter by adjourning the hearing as he has obtained vacant possession of this rental unit on March 28 and can attempt to re-rent the unit. There are serious consequences affecting the tenants' right to a fair hearing without this adjournment. The inability to provide evidence in response to the landlord's application will prejudice the tenants with respect to a potential monetary award against them while an adjournment of this proceeding will not result in any further loss to the landlord.

The request for an adjournment was granted. The hearing was adjourned.

Conclusion

I Order that a reconvened hearing be scheduled. **Notices of hearing are included with this Interim Decision for the Landlord to serve to the Tenant within 3 days of receipt of this Interim Decision.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the reconvened hearing. For more information see our website at:

www.gov.bc.ca/landlordtenant/

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Elsewhere in BC: 1-800-665-8779

The landlord is also ordered to provide the Branch with copies of all documentary evidence on which the landlord intends to rely. For their part, the tenants should supply their evidence to the landlord and to the Branch in accordance with Rule 4 of the Branch Rules of Procedure.

This Interim 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: April 17, 2015

Residential Tenancy Branch

