



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNR, DRI, LRE, OLC, FFT
For the Landlord: OPR-DR, MNR-DR, FFL

Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on January 21, 2022 seeking:

- suspension/set conditions on the Landlord’s right to enter
- to dispute a rent increase above the amount allowed by law
- the Landlord’s compliance with the legislation and/or the tenancy agreement
- reimbursement of the Application filing fee.

The Tenant amended their Application on January 31, 2022 to dispute the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) issued on January 30, 2022.

On February 10, 2022 the Landlord made a Direct Request Application (i.e., non-hearing) for an order of possession, and recovery of unpaid rent amounts. They also applied for the Application filing fee. With the Tenant’s Application already in place concerning this tenancy, the Landlord’s Application was joined to the participatory hearing already set down for the Tenant.

The matter proceeded to a participatory hearing on April 25, 2022, pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”).

The Landlord attended the conference call hearing. After 31 minutes, the Tenant attended the hearing.

Preliminary Matter – Landlord Application

In the first portion of the hearing, the Landlord maintained they did not receive the Notice of Dispute Resolution from the Residential Tenancy Branch in response to their Application. The one detail of note is the Landlord's email address provided on their Application. In the hearing, I reviewed this email address with the Landlord to ensure communication on my decision would be sent to the correct email address. The Landlord verified the same address as that on file at the Residential Tenancy Branch.

After processing the Application, the Residential Tenancy Branch provided the Notice of Dispute Resolution to the Landlord, via email, on February 16, 2022. The completed email record is on file and shows that completed email sent to the Landlord's email address on February 16, 2022 at 5:56PM. The email contained the Notice, Applicant Instructions, Respondent Instructions, and a fact sheet as attachments.

The Landlord contacted the Residential Tenancy Branch on February 22, 2022 to inquire on information about the tenancy status.

In the hearing, the Landlord confirmed they did not provide the Notice of Dispute Resolution to the Tenant because they did not receive it from the Residential Tenancy Branch.

The *Act* s. 59(3) sets out that an applicant must give a copy of the application within 3 days of making it. Additionally, the *Residential Tenancy Branch Rules of Procedure*, that are crafted to ensure a fair process, specify the documents to be served by an applicant (on this Application, the Landlord) to a respondent (on this Application, the Tenant). 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.

The Applicant's email address was that provided to the Residential Tenancy Branch on their Application. I find it more likely than not that the Landlord received a copy of the Notice via email. The record at the Residential Tenancy Branch shows this to be the case.

The Landlord did not provide a copy of the Notice –that document that is generated when a person applies for dispute resolution – to the Tenant. Records at the Residential Tenancy Branch verify that the Branch sent the Notice to the Tenant electronically on February 16, 2022 at 5:56PM. This included 4 attachments to that email. I verified the Landlord's email in the hearing, and that is the email address that appears on the record. The message explicitly

states that the Landlord must serve the packages to the Landlord no later than February 19, 2022.

The *Act* requires proper service in line with administrative fairness in which a party's legal rights and obligations are challenged. I find the Landlord had Notice delivered to them in due course from the Residential Tenancy Branch, then failed to serve it as the *Act* requires. I dismiss the Landlord's Application for Dispute Resolution in its entirety for this reason, with leave to reapply.

Preliminary Matter – 10-Day Notice to End Tenancy

Regarding the end of the tenancy, the Landlord issued the 10-Day Notice to the Tenant on January 30, 2022, giving the move-out date of February 10, 2022. In the hearing the Tenant provided that they were going to move out from the rental unit by May 1, 2022 and specified they would hand the keys to the Landlord on April 30, 2022. The Landlord in the hearing stated this was new information to them.

In line with this, and to ensure compliance with the April 30 end-of-tenancy date, I grant an Order of Possession to the Landlord for that date, as a measure of surety to the Landlord in this matter.

Given that the Tenant will end very soon, there is no need for a decision on the Landlord's right to enter, the disputed rent increase, and the Landlord's compliance with the *Act* and/or the tenancy agreement. I dismiss each of these issues, without leave to reapply.

The *Act* s. 55(1.1) prescribes payment of unpaid rent in the circumstances where the 10-Day Notice complies with the *Act*'s requirements for form and content, and the Tenant's Application is dismissed *or* the 10-Day Notice is upheld. Here, I grant the Landlord an Order of Possession *only* in line with the Tenant's pending move-out, and I have dismissed the Landlord's Application. I find in these circumstances s. 55(1.1) does not apply, and I grant the Landlord leave to re-apply for recovery of rent amounts owing. I make the singular exception for the month of April 2022, where the Tenant directly stated they did not pay rent for that month. That monetary amount is \$1,350. The Landlord must re-apply for other monetary amounts owing. Given the pending end of tenancy, the Landlord must apply for use of the security deposit for any amounts owing from the Tenant.

Conclusion

For the reasons above, I grant an Order of Possession to the Landlord effective 1:00 p.m. on April 30, 2022. When needed the Landlord must serve this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order for \$1,350 as surety of the Tenant's payment of the final month of rent. I provide the Landlord with this Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: April 25, 2022

Residential Tenancy Branch