



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, 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:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenants JH (the tenant), ER and JR and the landlord attended the hearing. 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 the attending parties affirmed they understand the parties are not allowed to record this hearing.

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 – Service

The tenant served the notice of hearing and the evidence (the materials) by registered mail in November 2021. The landlord confirmed receipt of the materials.

Based on the testimony offered by both parties, I find the tenants served the materials in accordance with section 89(1)(c) of the Act.

The landlord emailed the response evidence and left a copy in the tenants' mailbox on June 07, 2022. The landlord served one copy of the response evidence to the three tenants.

Tenants JH and ER confirmed receipt of the response evidence and that they had enough time to review it. Tenant JR did not have enough time to review the response evidence. The tenants did not authorize the landlord to serve the response evidence via email.

Section 89(1) provides specific rules for serving the materials:

(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];
- (f)by any other means of service provided for in the regulations.**

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;**
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) **any other evidence** submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

(emphasis added)

Residential Tenancy Regulation 43(2) provides:

For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

Residential Tenancy Branch Policy Guideline 12 states:

3. Special requirements for service of documents for an application for dispute resolution:

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.**
[...]

Email Service

To serve documents by email, **the party being served must have provided an email address specifically for the purposes of being served documents.** If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

(emphasis added)

The respondent must serve the response evidence individually and in accordance with section 89(1) of the Act. The applicant must authorize the respondent to serve the response evidence via email, per Residential Tenancy Regulation 43(2).

Based on the landlord's testimony, I find the landlord served the response evidence to the three tenants in a single package. Thus, I find the landlord did not serve the response evidence in accordance with the Act and with the Rules of Procedure. I excluded the landlord's response evidence from consideration.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and 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: "Evidence must be presented by the party who submitted it, or by the party's agent."

Both parties agreed the tenancy started on November 01, 2020 and ended on October 31, 2021. Monthly rent was \$2,375.00, due on the first day of the month. At the outset of the tenancy, a security deposit of \$1,187.50 was collected. The tenants authorized the landlord to retain \$160.00 and the landlord returned the balance of the security deposit.

The tenants are seeking compensation in the amount of \$28,500.00 (12 times the monthly rent payments):

Landlord is renting the property to individuals not being close family after ending our tenancy for landlords personal use. She was actively doing viewings while we were living in the property during October 2021, and we believe two tenants are now living there. Landlord failed to properly file the proper paperwork to end tenancy, but did so through email.

The tenant affirmed the landlord emailed them on August 23, 2021 and asked them to move out because the landlord wanted to move to the rental unit. The tenants did not receive a 2 month notice to end tenancy.

The landlord affirmed she did not serve a 2 month notice to end tenancy. The landlord has been a landlord for ten years and she did not know there is a specific form for a 2 month notice to end tenancy under section 49 of the Act. The landlord did not receive rent for the last month of the tenancy and asked the tenants to move out 2 months before the date she wanted to move to the rental unit.

Analysis

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

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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.

Section 51(2) of the Act states:

(1) **A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property]** is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[...]

(2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord to give the notice **must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord** or purchaser, as applicable, **does not establish that**

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(emphasis added)

Per Rule of Procedure 6.6 and section 51(2) of the Act and, the tenant has the onus to prove the landlord served a 2 month notice to end tenancy under section 49 of the Act and the landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

Section 49 of the Act states:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[...]

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give 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 undisputed testimony, I find the landlord did not serve a 2 month notice to end tenancy pursuant to section 49 of the Act, namely form RTB 32.

As the landlord did not serve a 2 month notice to end tenancy for landlord's use of the property under section 49 of the Act, I find the landlord does not have to pay the compensation under section 51(2) of the Act. Thus, the tenants are not entitled to the compensation they are seeking.

Pursuant to section 72 of the Act, as the tenants were not successful with their application, they must bear the cost of the filing fee.

I caution the landlord to review the Act and strictly follow the landlord's obligations under the Act, especially section 49.

Conclusion

I dismiss the tenants' application without leave to reapply.

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 15, 2022

Residential Tenancy Branch