



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR MNR-DR FFL

Introduction

This matter originally proceeded by way of a Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession for unpaid rent and a monetary order for unpaid rent. On May 18, 2022, an adjudicator adjourned this matter to a participatory hearing which was held on Thursday, September 15, 2022 at 9:30 a.m. Pacific Time. The Interim Decision dated May 18, 2022 (Interim Decision) should be read in conjunction with this Decision.

Attending the participatory hearing held by teleconference was the tenant, counsel for the landlord, AC (counsel), an agent for the landlord, CHL (agent) and witness, AP (witness). All participants, except counsel were affirmed. Counsel was not affirmed as counsel confirmed that they have been called to the BC Bar and as such, have already sworn an oath. I find there are no service issues as both parties confirmed having received and having reviewed documentary evidence from the other party in preparation for this hearing.

A summary of the evidence is provided below and includes only that which is relevant to my findings and/or orders. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

Counsel confirmed the email address for the landlord. The tenant affirmed that they do not have an email address and as such, the tenant was informed that the Decision will be sent by regular mail.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to the recovery of their filing fee under the Act?

Background and Evidence

As indicated in the Interim Decision, this hearing was ordered due to the landlord failing to include a copy of the Notice of Rent Increase, and to determine if rent had been increased from \$1,650 to \$1,670 in accordance with the Act.

Submitted in evidence for this hearing was a Notice of Rent Increase (NORI) dated September 13, 2021 (September 2021 NORI). The tenancy agreement was also submitted in evidence and confirms that a month-to-month tenancy began on February 1, 2020 and that monthly rent was due on the first day of each month in the amount of \$1,650.

Counsel submits that AP served the September 2021 NORI on September 15, 2021 at the rental unit. Counsel referred to an Affidavit from AP dated August 8, 2022 where AP affirms that they served the tenant by hand delivering the September 2022 NORI. AP indicates that they requested that the tenant sign an acknowledgment letter acknowledging the receipt of the September 2021 NORI, and that the tenant refused to do so. AP also indicates that they wrote a note at the same time on the letter noting that the tenant refused to sign for service.

The tenant testified that they never received the September 2021 NORI and that AP is not being truthful. As a result, AP was called as a witness. Below is an excerpt of the relevant questions asked of the witness and the relevant responses of the witness. For ease of reference, ARB will indicate Arbitrator, C will indicate Counsel, T will indicate Tenant, W will indicate Witness, while Q and A will indicate Question and Answer, respectively.

ARBQ: Are you aware of [name of tenant]?

WA: Yes.

CQ: Can you tell me your occupation?

WA: Caretaker of [address of building].

CQ: I am going to show you the [September 2021 NORI] for [address of rental unit] Do you see it in front of you?

WA: Yes.

CQ: Did you prepare this document?

WA: No.

CQ: Who did?

WA: I don't know. Did you Mr. Lee, Mr. Lee?

CQ: So you said this was prepared by Mr. Lee?

WA: Yes.

CQ: Did you get a copy of this document?

WA: I guess this is what you give me, isn't it? When Covid with the covering letter. Yes but I gave it back to him, I don't know, I gave it to [unintelligible].

CQ: So what did you do with this rent increase?

WA: I went to [first name of tenant]'s apartment and I knocked on her door. I gave her the Notice of Rent Increase. I took the first copy, the top page, I said will you please sign this? And the rest is for you. She took it and threw it at me on the floor.

ARBQ: So you took the top copy and gave it to the tenant?

WA: Yes, to sign and return to me.

ARBQ: Okay, you took the top copy and so did you have 2 different documents with you or one that would transfer through to the next page?

WA: There were other documents, yes.

ARBQ: Okay, so you had 2 copies of the notice of rent increase or 1 copy?

WA: Just 1 copy.

ARBQ: And was it the original and a copy?

WA: Yes, the original and included in that is the one for her to sign it and return it to me right away and she took it and threw it on the floor.

ARBQ: Okay, so did the tenant say anything when she was doing that?
WA: I can't remember that no... She probably did but I don't know, I can't remember.

Counsel: Now I am showing you another document, it is in your Affidavit of Service sworn on August 8, 2022 and it is Exhibit B.

CQ: Can you tell us what this document is?
WA: This is an acknowledgement receipt of the notice of rent increase [reading from document].

CQ: Do you see the handwritten note on the bottom of the page?
WA: Yes.

CQ: Do you know who made those notes?
WA: I did.

CQ: Why did you make this note?
WA: [Witness read document]

CQ: My question was why did you make this note?
WA: Why? I guess I don't trust her. That's why.

CQ: Have you served other tenants with notices of rent increases in the past?
WA: Yes I have.

CQ: And can you tell us what is your usual procedure when serving notices of increase please?
WA: The same as this, nothing different, I knock on the door, I tell them it's a rent increase, I get them to sign for acknowledgement, and I give them the rent increase papers.

CQ: So, on September 15, 2021, you did the same procedure with [name of tenant]?
WA: Yes.

Tenant cross-examination

TQ: How many times have I been served with a notice of rent increase?

WA: All together?

TQ: Yes.

WA: Twice.

TQ: What dates were the 2 different notices served on me as you haven't mentioned the other one, which I am interested in knowing?

WA: The first one was September the 15th and the second one was October the 5th.

TQ: The first one was September 15th of what year?

WA: 2021

TQ: That's the first one you served me with?

WA: Yes.

TQ: Okay, and the second one was on when?

WA: October the 5th.

TQ: October the 5th, what year?

WA: Well, I don't know why I said '20 there.

TQ: '20? October 5, '20 (October 2020 NORI)?

WA: Oh, okay 2020.

TQ: Okay, so you served me the second one after you served me the first one? And the second one is dated before the first one? Correct?

WA: I don't know, were these mailed? That I don't know.

TQ: You don't know?

WA: No, just a minute?

Counsel: [Counsel requested time for the witness to refresh their memory].

Tenant: Well, I've already got the answer that I know is the truth so I don't need to ask it again. Because the October 5th was the only one I received.

TQ: You state you knocked on my door?

WA: Yes.

TQ: And you handed me the original?

WA: Yes.

TQ: And you said the other copy dropped to the floor?

WA: She took the copy that we asked to have signed. She took that off and threw it on the floor at me. The other papers are stapled together, that one isn't.

TQ: She said the other papers, what is she talking about?

WA: The notice of rent increase.

Tenant: It's one page.

WA: No, it's 2 pages.

Tenant: Sorry, it is double-sided.

TQ: So you picked up the document, so why did you not submit that in evidence?

WA: I picked it up, it was the acknowledgment receipt and I turned it in to the office manager.

Re-direct by counsel

CQ: Can you let us know when you served the [NORI] on to [name of tenant] did you give her any other documents?

WA: No. It comes, the rent increase are two sheets stapled together and on top of that is an acknowledge receipt.

Final questions by tenant

TQ: You manage 7 building which probably leads to 150-200 tenants, do you do the rent increase the same way each time?

WA: Yes.

TQ: Are you allowed to do evictions?

WA: Am I allowed to do evictions? Me do them? No.

Witness excused.

Counsel clarified that there was another NORI on October 5, 2020 that was served on the tenant. Counsel submits that that was during the pandemic; however, and that due to the moratorium on rent increases at that time, the landlord later realized that it was done in error. As a result, the landlord never tried to enforce that NORI.

The tenant summarized their position by restating that they never received a NORI dated September 15, 2021 and that AP stated the first one served was September 15, 2021 and the second was dated October 5, 2020. The tenant speculated that AP was trying to get back payments without being served a NORI and indicated that they saw AP many times outside and that AP never mentioned anything. The tenant testified that AP never once mentioned that they did not get the proper rent and that if the landlord realized that they served the wrong NORI or didn't give a NORI, then the landlord should have posted the NORI to their door.

The tenant testified that they have been "working in law for 45 years" and documents can be posted to a door without signing for them and that they just want things to be done legally. The tenant also stated that the landlord does not need to enter a rental unit to serve a NORI. The tenant reiterated that the first time they knew about a NORI dated September 15, 2021, was when they were served with the landlords' application for dispute resolution.

The tenant accused the AP of committing perjury and stated that AP is almost 80 years old. The tenant stated that they did not know agent CHL and wondered why they were at the hearing. CHL testified that they are a rental officer and confirmed that they were the person who signed the tenancy agreement.

After 56 minutes, the hearing concluded.

Analysis

Based on the documentary evidence, submissions of counsel, and the testimony from the tenant, agent and the witness, and on the balance of probabilities, I find the following.

I have carefully considered all of the evidence before me, and I find the witness testimony to be inconsistent with the Affidavit submitted in evidence as the witness testified that they served the September 2021 NORI before the October 2020 NORI. I

find that is not possible and is inconsistent as a result. Furthermore, I find that the tenant's testimony was consistent throughout the hearing, which was the tenant denied being personally served with the September 2021 NORI and only became aware of it when served with the application for dispute resolution.

Based on the above, I am not satisfied that the tenant was served with September 2021 NORI in accordance with the Act. As a result of the inconsistent testimony from the witness, I prefer and afford more weight to the testimony of the tenant in this matter. I therefore find that the September 2021 NORI was not served on the tenant as claimed.

As a result, **I cancel** the September 2021 NORI and find that it is of no force or effect. In addition, I find that the 10 Day Notice served on the tenant by the landlord is **invalid**, given my finding that the September 2021 NORI was not served in accordance with the Act. Consequently, **I dismiss** the landlord's application in full due to inconsistent testimony from the witness.

Pursuant to section 62(3) of the Act I make the following order:

I ORDER the tenancy to continue until ended in accordance with the Act.

I find the rent remains at **\$1,650** per month pursuant to section 62(2) of the Act and will remain so until increased in accordance with the Act. The landlord is at liberty to issue a new NORI on the tenant, which includes 3 whole months' notice as indicated on the prescribed NORI form. The landlord is also reminded to ensure that it is served in accordance with the Act and that a Proof of Service document be completed in full.

Conclusion

The landlord's application is dismissed without leave to reapply due to the inconsistent testimony of the witness.

The tenancy shall continue until ended in accordance with the Act.

The monthly rent remains \$1,650 until increased in accordance with the Act.

As the application was dismissed without leave to reapply, the filing fee is not granted.

The Decision will be emailed to the landlord.

The tenant will be sent the Decision by regular mail as they confirmed they did not have an email address.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 23, 2022

Residential Tenancy Branch