



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated April 30, 2022; for an order to provide services or facilities required by the tenancy agreement or law; and to recover the \$100.00 cost of his Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents and evidence by email, sent on May 18, 2022; however, the Landlord said that he did not receive the email until May 30, 2022, which he said was late, according to the Rules.

Rule 3.1 states that the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the RTB, 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].

Further, Rule 3.5 states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

The Tenant did not direct me to any evidence that establishes he served the Landlord with the Notice of Hearing package within three days of the Notice of Dispute Resolution Proceeding Package being made available to him by the RTB on May 18, 2022. As such, I find that the Tenant failed to properly serve the Landlord with his Notice of Hearing documents and evidence, as required by the Rules.

I, therefore, **dismiss the Tenant's Application** wholly without leave to reapply, pursuant to section 62 of the Act.

However, when a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an Order of Possession if – first - I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2020, with a monthly rent of \$1,650.00, plus \$251.00 for utilities, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$825.00, and no pet damage deposit.

The One Month Notice was signed and dated April 30, 2022, it has the rental unit address, it was served via email on April 30, 2022, with an effective vacancy date of May 31, 2022, which is automatically corrected to June 30, 2022. The One Month Notice was served on the grounds that the Tenant is repeatedly late paying rent; the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the One Month Notice is compliant with section 52 of the Act as to form and content. Accordingly, having dismissed the Tenant's Application wholly without leave to reapply, and finding the One Month Notice compliant with section 52, I must grant the Landlord an order of possession for the rental unit, pursuant to section 55 of the Act.

The Landlord is granted an **Order of Possession** of the rental unit, and since the effective vacancy date has passed, the Order will be **effective two days** after it is served to the Tenant.

This Order must be served on the Tenant by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The Tenant is unsuccessful in his Application, as he failed to serve the Landlord with the Notice of Hearing by the deadline set out in the Act and Rules. The Tenant's **Application is dismissed wholly** without leave to reapply.

As the One Month Notice is compliant with section 52 of the Act, as to form and content, I grant the Landlord an **Order of Possession effective two days after it is served** to the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 16, 2022

Residential Tenancy Branch