Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. An interpreter for the landlords attended the hearing and affirmed to translate to the best of her ability from the English language to the Cantonese language and from the Cantonese language to the English language.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution 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."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the tenants served the landlords with their application for dispute resolution and evidence via registered mail. Neither party could recall the dates the above documents were sent or received. I find that the landlords were served in accordance with section 88 and 89 of the *Act.*

The landlords testified that they did not serve their evidence on the tenants. The landlords testified that they believed the Residential Tenancy Branch would serve the tenants with their evidence.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The Notice of Dispute Resolution Proceeding, which was served on the landlords, states:

> Each respondent has been assigned a unique Dispute Access Code for submitting evidence to the Residential Tenancy Branch. Evidence must be served to the Residential Tenancy Branch and to each applicant as soon as possible. Instructions for evidence processing are included in this package. Deadlines are critical. Intentional delay may affect the outcome of the hearing. Late evidence may or may not be considered by the arbitrator. To learn about serving evidence, visit the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit
>
> [Emphasis added]

I find that the landlords were clearly advised of the service requirements pertaining to their evidence as the Notice of Dispute Resolution Proceeding document states that evidence must be served to each applicant as soon as possible. I find that the landlords breached Rule 3.15 of the Rules by failing to serve their evidence on the tenants. The landlord's evidence is therefore excluded from consideration.

Preliminary Issue- Effectiveness of Notice

Both parties agree that the landlords personally served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property on June 16, 2022 (The "First Notice"). Both parties agree that the First Notice was not signed or dated. The tenants filed to dispute the First Notice on June 29, 2022. I find that the tenants filed to dispute the First Notice within the required time period.

Based on the testimony of both parties, I find that the tenants were served with the First Notice on June 16, 2022 in accordance with section 88 of the *Act.*

Section 52 of the *Act* states that 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.

I find that the First Notice is ineffective because it was not signed or dated. The First Notice is therefore cancelled and of no force or effect.

The landlords testified that they served the tenants with a second Two Month Notice to End Tenancy for Landlord's Use of Property on June 30, 2022 via posting (the "Second Notice"). The landlords testified that the Second Notice was signed and dated. No documentary evidence pertaining to the Second Notice was accepted for consideration. The tenants testified that they did not receive Second Notice.

Rule 6.6 of the Rules 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. 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. I find that the burden of proof regarding service of the Second Notice lies with the landlords.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The parties provided contrary testimony regarding the service of the Second Notice. I find that the landlords have not proved, on a balance of probabilities, that a Second Notice was served.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the $100.00 filing fee from the landlords.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct $100.00, on one occasion, from rent due to the landlords.

Conclusion

The First Notice is cancelled and of no force or effect.

The tenants are entitled to deduct $100.00 from rent due to the landlord on one occasion.

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: November 03, 2022

Residential Tenancy Branch