



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 557636 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, MNR, MNSD, SS, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; for authorization to serve documents or evidence in a different way than is required by legislation; and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided

Should the Landlord be given authorization to serve documents in a different way than is required by the *Residential Tenancy Act (Act)*; is the Landlord entitled to compensation for unpaid rent and damage to the rental unit; and is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that on January 29, 2015 a private investigator personally served the Tenant with the initials "B.S." with the Application for Dispute Resolution and Notice of Hearing. He stated that he has an affidavit from the private investigator attesting to service of these documents, although he did not submit it to the Residential Tenancy Branch.

The Agent for the Landlord stated that on January 15, 2015 a process server personally served the Tenant with the initials "K.H." with the Application for Dispute Resolution and Notice of Hearing. He stated that he has an affidavit from the process server attesting to service of these documents, although he did not submit it to the Residential Tenancy Branch.

The Agent for the Landlord stated that the Landlord did not serve the aforementioned affidavits to the Tenant with the initials "B.S." after January 29, 2015 or to the Tenant with the initials "K.H." after January 15, 2015. He stated that he does not know if the affidavits were served to the Tenants by the private investigator/process server when the Applications for Dispute Resolution and Notices of Hearing were served.

The Agent for the Landlord stated that he is currently able to fax the affidavits to the Residential Tenancy Branch; however he was advised that the documents would not be accepted for these proceedings.

The Agent for the Landlord asked that the person who served one of the Tenants be called as a witness and he provided a telephone number for that individual. I dialed the number provided and was advised by a third party that the individual was not available. The Agent for the Landlord was unable to provide an alternate phone number.

Analysis

Section 59(3) of the *Act* requires an applicant to serve the respondent with an Application for Dispute Resolution within three days of filing the Application for Dispute Resolution. The purpose of serving the Application for Dispute Resolution is to notify the respondent that a dispute resolution proceeding has been initiated and to provide the respondent with the opportunity to respond.

The Application for Dispute Resolution must be served to the respondent in accordance with section 89 of the *Act*. As the Landlord is the applicant in this matter, the Landlord has the burden of providing the Application for Dispute Resolution has been served.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure stipulates that at the hearing the applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that each respondent was served with the hearing package and all evidence, as required by the *Act*.

Residential Tenancy Branch Policy Guideline #12, with which I concur, reads:

Where the respondent does not appear at a Dispute Resolution Hearing, the applicant must be prepared to prove service under oath. The person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.
- Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply. Adjournments to prove service are given only in unusual circumstances.

I find that the Landlord has submitted insufficient evidence to establish that either Tenant was served with the Application for Dispute Resolution or Notice of Hearing, as the individuals serving those documents did not attend the hearing and affidavits from those individuals was not submitted in evidence.

As the Landlord has failed to establish that either Tenant was served with the Application for Dispute Resolution and Notice of Hearing, I find that I am unable to proceed with this hearing. I therefore dismiss the Landlord's Application for Dispute Resolution, with leave to reapply.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that any documents to be relied upon at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. This rule ensures that all parties have documents to be considered at the hearing. It also provides the Residential Tenancy Branch time to provide Arbitrators, who are working in various locations, with documents related to the proceeding.

The Landlord's request to fax the affidavits to the Residential Tenancy Branch during the hearing was denied because faxing documents to the Residential Tenancy Branch after the

hearing has commenced does not comply with rule 3.14 of the Residential Tenancy Branch Rules of Procedure. The affidavits were not submitted to the Residential Tenancy Branch within 14 days. More importantly, the Agent for the Landlord does not know if the affidavits were ever served to the Tenants.

I considered adjourning this hearing for the purposes of providing the Landlord with the opportunity to submit/serve the affidavits in accordance with the Residential Tenancy Branch Rules of Procedure; however I concluded an adjournment was not appropriate in these circumstances. I find that the Landlord had ample time to submit the affidavits in accordance with the Residential Tenancy Branch Rules of Procedure, given that service allegedly occurred in January of 2015.

As the Landlord now has an address for the Tenants, I find it reasonable for the matter to be simply dismissed, with leave to reapply. The Landlord retains the right to file an application to serve the Tenants with documents or evidence in a different way than is required by legislation if the Landlord is unable to serve the Tenants with notice of a future Dispute Resolution Proceeding in accordance with section 89 of the *Act*.

Conclusion

The Landlord retains the right to file another Application for Dispute Resolution in regards to this matter. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 10, 2015

Residential Tenancy Branch

