Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated and received May 25, 2016, with an effective date to end the tenancy on July 30, 2016.

It is not disputed that the tenant's application was submitted and the fee waived on June 3, 2016 and the hearing letter issued by the Residential Tenancy Branch was dated June 6, 2016, she served the application and notice of hearing on the landlord until June 17, when she delivered the hearing package to the landlord's business office.

The landlord relies on s. 59(3) of the *Residential Tenancy Act* (the "*RTA*") arguing that the tenant's application must be dismissed because it was not serve within the three day period imposed by the subsection.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant's admitted failure to comply with s. 59(3) fatal to her application? Can that time be extended if an extension is warranted?

Background and Evidence

The rental unit is an apartment in an apartment building.

The Notice is question claims that the tenant or a person permitted on the property by her has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant says she failed to serve the landlord with the hearing package until June 17 because she misunderstood the instructions. She says she has PTSD and is on medication. She says her condition affects her comprehension and memory and can provide psychiatric evidence to corroborate it.

She acknowledges that she has made a previous application against this landlord.

The landlord's representative says that because of the limited time between service and the hearing date, she has been unable to obtain evidence about disturbances at the tenant's rental unit from persons who live in a building across the street from the tenant's rental unit.

Analysis

The requirement to serve the Notice of Hearing package within three days after making the application is a requirement imposed by Rule 3.1 of the Rules of Procedure. It provides,

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the Application for Dispute Resolution;

b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;

c) the dispute resolution proceeding information package 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*]

This Rule is derived from s. 59(3) of the *RTA*, which provides,

> (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Failure to serve the originating documentation is not simply a breach of the Rules of Procedure, from which relief might be granted. It is a breach of the statute.

The purpose of s. 59 (3), requiring timely service of an application for dispute resolution and the notice of hearing letter, is to ensured that a respondent has early knowledge of the proceeding and is afforded a fair opportunity to preserve evidence and to prepare. The *Act* does not contain any other provision to ensure such timeliness at the start of a proceeding. It is likely that s. 59 (3) was drafted with the expectation that hearings would be set for only a few weeks after the application was made. That is in keeping with the broad intention of the *Act* to provide a speedy and inexpensive dispute resolution mechanism for landlords and tenants in British Columbia. In such a case, it is vital that the origination documentation reach the respondent in very short order. The respondent would need to arrange availability for the hearing date and collect, preserve and prepare evidence as soon as possible.

An arbitrator cannot extend the three day time limit. Though arbitrators are given a general power under s. 66(1) of the *RTA* to extend time limits in exceptional circumstances, the power to extend the three day period under s. 59)3) is specifically excluded. Section 66 (1) of the Act states:

> 66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, **other than as provided by section 59 (3) [starting proceedings]** or 81 (4) [decision on application for review].

(emphasis added)

Under s. 59(3) the director under the *RTA* may "specify" a different time period for service of the hearing package. She has not done so in this case.

As an extension of the three day service period cannot be granted by me, neither the reasons for the tenant's non-compliance nor the prejudice alleged by the landlord are relevant factors.

I conclude that a breach of s. 59 (3) of the *Act*; failure to serve a respondent within the three day period prescribed, is a failure to comply with a mandatory statutory requirement essential to the dispute resolution process and is a failure from which I

have no power to grant relief. Breach of s. 59 (3) may serve to nullify a proceeding unless reliance on it is waived by the respondent.

The tenant's application is a nullity and I dismiss it with leave to re-apply.

I draw the parties' attention to s. 66(3) of the *RTA*, which requires the tenant to make any further application to cancel this Notice, including a request for an extension of time, before the July 31 effective date of the Notice.

Section 55(1) of the *RTA* requires that an order of possession be issued where a tenant's application to cancel a Notice has been dismissed. The landlord will therefore have an order of possession for July 31, 2016, subject to any successful application the tenant might make between now and then.

Conclusion

The tenant's application is dismissed with leave to re-apply.

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: July 07, 2016

Residential Tenancy Branch