



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and the recovery of the filing fee, and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I inquired with the Landlord regarding service of the documents as explained below.

In the hearing the Landlord testified that he attended the Tenant’s rental unit yesterday to advise them of the hearing. The Landlord testified that they were unaware of the hearing date and time until they called the Residential Tenancy Branch (the “Branch”) yesterday and that as a result, they did not serve the Tenant with any documents in relation to this hearing.

Records at the Branch indicate that on August 22, 2017, a representative of the Branch attempted to contact the Landlord to advise them that the Notice of Hearing package was ready for pick-up, however, the Landlord’s voicemail was full and a message could not be left. Records also indicate that the Landlord contacted the Branch by telephone on August 20, 2017, inquiring about the hearing. At that time the Landlord was advised that the Notice of Hearing documents had not been picked up and that the Branch had attempted to reach them in order to have them picked-up and served on the Tenant. The Landlord was also advised that the hearing may be dismissed.

Section 59 of the Act states the following with regards to the service of the Application on the Respondent:

Starting proceedings

59 (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.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

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].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I find that advising the Tenant in person of the date and time of the hearing does not constitute service under the *Act* and as a result, I find that the Tenant has not been duly served with the Application, the Notice of Hearing, or the evidence before me in accordance with the above noted sections of the *Act* and the Rules of Procedure.

Further to this, I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the

Tenant was not served with the Application, Notice of Hearing, or the evidence before me, I find that they did not have a fair opportunity to know the case against them or appear in their defense. As a result, the Application is dismissed with leave to reapply.

Conclusion

The Landlord's Application is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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: September 22, 2017

Residential Tenancy Branch