



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 9, 2018 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”).

The Landlord appeared at the hearing with legal counsel and a legal assistant. I explained the process to the Landlord and her representatives and nobody had questions about the proceedings when asked. The Tenant did not appear at the hearing.

I addressed service of the hearing package and Landlord’s evidence. I asked the Landlord and her representatives if the hearing package, including the Application, Hearing Notice and Fact Sheet provided by the Residential Tenancy Branch, had been served on the Tenant. The representatives of the Landlord said the hearing package was not served on the Tenant. The representatives also confirmed that the evidence submitted by the Landlord had not been served on the Tenant.

The *Act* and Rules of Procedure (the “Rules”) set out service requirements in relation to applications for dispute resolution.

Section 59(3) of the *Act* states “...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”.

Rule 3.1 of the Rules states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, 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].

Rule 3.2 of the Rules addresses applications where a landlord is seeking an early end to the tenancy and states that all “evidence to be relied on at the hearing must be served on the respondent with the Notice of Dispute Resolution Proceeding Package described in Rule 3.1”.

Rule 3.5 of the Rules states that “[a]t 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”.

I note that the “Residential Tenancies Fact Sheet” that would have been sent to the Landlord or her representatives upon filing the Application includes information about the above service requirements.

The purpose of the service requirements in the *Act* and Rules is to put respondents on notice of the hearing and to give them an opportunity to respond to the claims being made against them. Service of the hearing package and applicant’s evidence on a respondent is essential to ensure principles of natural justice and procedural fairness are applied.

Here, the Landlord was required under the *Act* and Rules to serve the Tenant with the hearing package and Landlord’s evidence. I advised the Landlord and her representatives that we could not proceed with the hearing given that the Tenant was

not served with the hearing package or Landlord's evidence and had not appeared at the hearing. In these circumstances, the Application is dismissed with leave to re-apply.

I would note that the Landlord has filed the Application under section 56 of the *Act* relating to early end to tenancies. This section only applies in the most serious cases where the tenant has breached the *Act* and the landlord cannot wait for a notice to end tenancy for cause to take effect. In this particular situation, the Landlord and her representatives are advised to contact an Information Officer or to review the Residential Tenancy Branch website for information on how to end a tenancy due to unpaid rent or due to a municipal order.

Conclusion

The Application is dismissed with leave to re-apply given that the Tenant was not served with the hearing package or Landlord's evidence and did not appear at the hearing. However, the Landlord is cautioned to obtain information on the correct notice to end tenancy to issue to the Tenant as an early end to tenancy application does not appear to be appropriate in the circumstances.

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: May 2, 2018

Residential Tenancy Branch