



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent P.D. (herein referred to as "the landlord") attended the hearing on behalf of the corporate landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of Notice of Dispute Resolution Proceeding Documents

As only the landlord attended the hearing, I asked the landlord to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding package for this hearing, which had been emailed to her by the Residential Tenancy Branch on May 14, 2018. The landlord testified that she had provided the tenant with the notice of this hearing by sliding it under his door on May 14, 2018. She stated that around June 12, 2018, she provided the tenant with the notice of hearing information again, along with additional evidence which she had uploaded to the dispute website, by posting it on his door and sending it to him via Canada Post registered mail. The landlord provided a

Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision.

Where a respondent is not at the hearing, the applicant bears the burden to prove the respondent was served with notification of the hearing and the claims against them in one of the ways permitted under section 89 of the *Act*.

Since this application pertains to an Order of Possession for the landlord, section 89(2) of the *Act* provides that the permissible methods of service are as follows:

- by leaving a copy with the tenant;
- by sending a copy by registered mail to the address at which the tenant resides;
- by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant; or
- by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

The landlord originally served the tenant by sliding the notice of hearing information under the tenant's door, which is not a permissible method of serve for this application, as noted above. Approximately one month later, the landlord served the notice of this hearing, with the evidence, by posting it to the tenant's door and by sending it by registered mail, which are permissible methods of service. However, the landlord did not serve the tenant using a permissible method of service within the three days required by Rule 3.1 of the Residential Tenancy Branch Rules of Procedures, which sets out the requirements for service of the Notice of Dispute Resolution Proceeding package, as follows:

*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].*

[My emphasis added]

Therefore, I find that the landlord failed to establish that the tenant was served with notification of this proceeding in a manner that complies with section 89(2) of the *Act* and in accordance with the Residential Tenancy Branch Rules of Procedure. I order the landlord's application for an Order of Possession dismissed, and grant the landlord liberty to reapply. I make no findings on the merits of the matter. The issuance of this decision with leave to reapply does not extend any applicable time limits under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Conclusion

The landlord's application for an Order of Possession is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

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 6, 2018

Residential Tenancy Branch