



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1161137 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 07, 2019 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 23, 2019 (the "Notice"). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee.

The Agent for the Landlord attended the hearing. Nobody attended the hearing for the Tenant. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Agent had included a second tenant on the Application. During the hearing, the Agent testified that the tenancy agreement for the rental unit is between him and the Tenant. He said the second tenant rented a separate house on a separate lot and that he has a hearing in relation to that rental unit at the end of October. Given this, I removed the second tenant from the Application and style of cause as I was not satisfied she is a tenant in relation to the rental unit.

The Landlord submitted the Notice and a Proof of Service document prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package was served on the Tenant at the rental unit August 18, 2019 by registered mail. He provided Tracking Number 1 for this. I looked this up on the Canada Post website which shows it relates to a package sent September 09, 2019. I advised the Agent of this. He then said Tracking Number 1

actually relates to a different package in relation to the other rental unit. The Agent said he could not find the receipt for the package sent to the Tenant.

The Agent said he did not serve his evidence on the Tenant.

The Agent did not submit any documentary evidence relating to service of the hearing package on the Tenant.

I told the Agent I would proceed with the hearing and make a decision about service in my written decision.

I proceeded with the hearing and heard from the Agent on the Notice and unpaid rent. The Agent's testimony about unpaid rent was unclear. He provided inconsistent testimony about what rent was outstanding when. His testimony changed each time I tried to confirm my understanding of the situation. I found the Agent's testimony about unpaid rent unreliable.

I find I cannot rely on the Agent's verbal testimony in the absence of evidence to support it. In relation to service of the hearing package on the Tenant, the Agent gave conflicting evidence on this point as well as he testified that Tracking Number 1 related to the hearing package served on the Tenant but changed this testimony when I told him the Canada Post website information is different from his testimony about service. The Agent could not provide the Tracking Number for the hearing package sent to the Tenant. The Agent provided no evidence to support his verbal testimony that the hearing package was sent by registered mail to the Tenant at the rental unit August 18, 2019. It would have been easy for the Agent to provide this evidence as he would have received a receipt for the package showing the Tracking Number and when it was sent.

In the absence of evidence to support the Agent's testimony about service of the hearing package on the Tenant, I am not satisfied the hearing package was served on the Tenant in accordance with the *Residential Tenancy Act* (the "Act") and Rules of Procedure. The Tenant did not appear at the hearing. The Tenant did not submit evidence for the hearing which may have satisfied me he received the hearing package.

In the circumstances, I am not satisfied of service and therefore dismiss the Application with leave to re-apply. This does not extend any time limits set out in the *Act*.

Conclusion

I am not satisfied the Tenant was served with the hearing package in accordance with the *Act* and Rules of Procedure and therefore dismiss the Application with leave to re-apply. This does not extend any time limits set out in 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 *Act*.

Dated: October 10, 2019

Residential Tenancy Branch