



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL OPRM-DR**

Introduction

On August 20, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

Section 13(2)(f)(v) of the *Act* establishes that a tenancy agreement is required to identify "the day in the month, or in the other period on which the tenancy is based, on which the rent is due."

Section 46 (1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The tenancy agreement submitted by the landlord has no date indicating the day in the month on which the rent is due, which is necessary in order to determine the validity of the 10 Day Notice as a landlord cannot ask for rent before the day it is due.

As the Direct Request process is an *ex parte* process that does not allow for the clarification of facts, I find that I am not able to confirm when the monthly rent is due and that this fact can only be clarified in a participatory hearing.

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Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

I have been delegated authority under the *Act* to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:10 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m.

Preliminary Issue – Service of Notice of Reconvened Hearing/ Notice of Dispute Resolution Proceedings

The landlord testified she was provided with the Notice of Reconvened Hearing/ Notice of Dispute Resolution Proceedings when she picked it up some time after August 26, 2019 at the Service BC Office. She acknowledged she never served a copy of the Notice of Reconvened Hearing/ Notice of Dispute Resolution Proceedings to the tenant as ordered by the adjudicator **in bold print** in the interim decision dated August 20th.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure state:

At 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.

As the tenant did not attend the hearing and the landlord was unable to demonstrate to my satisfaction that she served the tenant with the Notice of Reconvened Hearing/ Notice of Dispute Resolution Proceedings, I find myself unable to proceed with the

landlord's Application for Dispute Resolution. I must dismiss the landlord's Application for Dispute Resolution with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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: October 07, 2019

Residential Tenancy Branch