



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 January 13, 2020 (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 and T.R. appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord and T.R. who did not have questions when asked. The Landlord and T.R. provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package was posted on the door of the rental unit January 15, 2020. The Landlord testified about the efforts he made to serve the Tenant in person. He testified that the Tenant is in custody. The Landlord testified that the Tenant's girlfriend took the hearing package off the door. The Landlord testified that the Tenant's girlfriend was aware of the hearing as the Landlord also sent the Tenant's girlfriend an email and text message about it. The Landlord testified that the Tenant is not reachable.

The Landlord testified that the Tenant's girlfriend is not a tenant under the tenancy agreement for the rental unit. The Landlord also testified that he thinks the Tenant's girlfriend lives elsewhere.

In relation to the evidence, the Landlord testified that he posted the RCMP business card and four photos on the rental unit door with the hearing package. The Landlord had submitted 19 photos, a written statement, a blank tenancy agreement, an RCMP business card, a news article and evidence regarding service.

RTB notes show the Landlord confirmed he could serve the required documents in person to the Tenant. The RTB notes show the hearing package was sent to the Landlord to serve by January 15, 2020.

Section 59(3) of the *Act* requires an applicant to serve a copy of the application for dispute resolution on the respondent.

Section 89(2) of the *Act* sets out the permissible methods of service for a hearing package where a landlord has applied for an order of possession based on section 56 of the *Act* and states:

(2) An application by a landlord under section 55...56 [application for order ending tenancy early] or 56.1...must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1)...

Section 90 of the *Act* states:

90 A document given or served in accordance with section 88...or 89...unless earlier received, is deemed to be received as follows...

- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

Rule 10 of the Rules of Procedure governs expedited hearings and states:

10.3 Serving the notice of dispute resolution proceeding package

The applicant must, within one day 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:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;

- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet...provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution...

The order issued by the Executive Director June 26, 2019 in relation to service for expedited hearings states:

1. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is **between six and 11 days after the date the application is made must serve their materials**
 - a. by leaving a copy with the person,
 - b. if the person is a landlord, by leaving a copy with an agent of the landlord, or
 - c. if the person is a tenant, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.
2. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is **between 12 and 16 days after the date the application is made must serve their materials**
 - a. by any method set out in paragraph 1 of this order,
 - b. by attaching a copy to a door or other conspicuous place at the address at which the person resides, or
 - c. if the person is a landlord, by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord.

(emphasis added)

Here, the Landlord filed the Application January 13, 2020. The Landlord told the RTB he would serve the hearing package in person and it was on this basis that the Landlord was given a hearing January 20, 2020, seven days after the Application was filed.

Pursuant to the order of the Executive Director, the Landlord was required to serve the hearing package to the Tenant in person or at the rental unit to an adult who apparently resides with the Tenant. The Landlord did neither as the hearing package was posted to the door of the rental unit. This is only permitted when the hearing is set 12 to 16 days after the Application was filed. This is not the case here. The Landlord did not comply with the requirements of service set out in the order of the Executive Director.

The Landlord posted the hearing package on the door of the rental unit January 15, 2020. Pursuant to section 90 of the *Act*, this would be deemed served on the Tenant January 18, 2020, only two days prior to the hearing. This is not sufficient notice of the hearing.

Further, the Landlord did not serve all of the evidence submitted for this hearing. The Landlord was required to serve all evidence he sought to rely on at the hearing to the Tenant in accordance with the *Act* and Rules.

I acknowledge that the Landlord made efforts to serve the Tenant in person and that the Landlord was unable to do so given the circumstances. However, this does not change the service requirements.

In relation to the Tenant's girlfriend taking the hearing package off the door and being made aware of the hearing through text and email, I do not find this sufficient for a number of reasons. First, the Tenant's girlfriend is not a tenant under the tenancy agreement and does not reside at the rental unit. Second, the Landlord did not submit further evidence to support his testimony about the Tenant's girlfriend taking the notice off the door, emailing the Tenant's girlfriend or texting the Tenant's girlfriend. Third, email and text are not permissible forms of service under the *Act* or order of the Executive Director.

Nobody appeared at the hearing for the Tenant. The Tenant did not submit evidence for the hearing.

In the circumstances, I am not satisfied the Tenant was served in accordance with the *Act*, Rules or order of the Executive Director.

I did not decide the service issue during the hearing. I heard the Landlord and T.R. on the basis for the Application and circumstances that lead to the Application. I acknowledge that the circumstances as outlined by the Landlord and T.R. are serious.

However, these proceedings are governed by the *Act* and Rules. 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 on a respondent is essential to ensure principles of natural justice and procedural fairness are applied. An arbitrator cannot decide a matter without first being satisfied that the respondent was properly served.

Here, I am not satisfied the Tenant was properly served. Therefore, the Application is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

It is open to the Landlord to call the RTB and speak to an Information Officer about service requirements if the Landlord has questions about this moving forward.

Conclusion

I am not satisfied the Tenant was served in accordance with the *Act* or Rules. Therefore, the Application is dismissed 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: January 20, 2020

Residential Tenancy Branch