



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rest Inn
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 20, 2020 (the "Application"). The Tenant applied as follows:

- For an order that the Landlord allow access to the unit; and
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

I note that both issues relate to the Tenant disputing a letter she received from the Landlord stating she has to pay for parking.

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

The Application lists S.G. as an advocate for the Tenant. I asked the Tenant if she was expecting S.G. to attend the hearing. The Tenant advised that she was and that she had called S.G. prior to the hearing but had not reached her. I proceeded with the hearing.

S.G. had submitted a tenancy agreement and written submissions prior to the hearing. The Landlord had not submitted evidence. I asked the Tenant about service of the hearing package and evidence.

The Tenant testified that S.G. served the hearing package on the Landlord. The Tenant testified that the hearing package was sent by registered mail. The Tenant said she knows this because S.G. told her she sent the hearing package by registered mail. The

Tenant could not provide a tracking number for this. The Tenant did not know when the package was sent. The Tenant did not know if the evidence was in the package. The Tenant testified that the Landlord received the papers.

Neither the Tenant nor S.G. submitted evidence of service.

I told the Tenant I would give her an opportunity to call S.G. to have her call into the hearing as long as the Tenant could do so without exiting the conference call. The Tenant was unable to do so without hanging up and exiting the hearing. I did not allow the Tenant to hang up and exit the hearing.

I told the Tenant I would hear her on the parking issue and make a decision about service in my written decision. I told the Tenant that, if I was not satisfied of service, I would dismiss the Application with leave to re-apply. I told the Tenant that, if I was satisfied of service, I would decide the parking issue.

I heard the Tenant on the parking issue. The hearing proceeded for 46 minutes. Neither S.G. nor the Landlord called into the hearing during this time.

I have considered the Tenant's testimony about service. Given the requirements in the *Residential Tenancy Act* (the "Act") and Rules of Procedure (the "Rules"), to be satisfied of service, I must be satisfied as to how the hearing package was served and when the hearing package was served.

The relevant sections of the *Act* and Rules state:

59 (3) ...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.

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (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;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord...

(d) as ordered by the director under section 71 (1)...

Rule 3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

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)...provided by the Residential Tenancy Branch; and
- d) any other evidence submitted...

Rule 3.5 Proof of service required at the dispute resolution hearing

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.

I am not satisfied the hearing package was served on the Landlord by registered mail given the following. The Tenant did not send the hearing package, S.G. did. The only basis for the Tenant's testimony that it was sent by registered mail is that S.G. told her it was. The Tenant was not able to provide a tracking number for the package. There is no documentary evidence submitted from the Tenant or S.G. about service.

I acknowledge that the Tenant testified that the Landlord received the hearing package. However, I do not find this testimony alone sufficient to prove service.

Further, I am not satisfied as to when the hearing package was served on the Landlord as the Tenant did not know this information. I acknowledge that the three-day timeline for serving the hearing package can be extended. However, the applicant must be able to show the hearing package was served in sufficient time to allow the respondent to prepare for, and appear at, the hearing. Here, the Tenant did not know when the hearing package was served. Given this, I am not satisfied the hearing package was served in sufficient time to allow the Landlord to prepare for, and appear at, the hearing.

Nobody appeared at the hearing for the Landlord to confirm service. The Landlord did not submit evidence for the hearing, which may have satisfied me of service.

In the absence of further evidence of service, I am not satisfied the hearing package was served on the Landlord in accordance with the *Act* or within a reasonable time prior to the hearing. Given this, I dismiss the Application with leave to re-apply. The Tenant can re-apply in relation to the parking issue; however, the Tenant must file a new Application for Dispute Resolution and will need to serve the Landlord in accordance with the *Act* and Rules.

Further, the parties may wish to refer to the information on the RTB website about parking fees which is available here:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/starting-a-tenancy/deposits-and-fees>

Conclusion

The Application is dismissed with leave to re-apply. This decision 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: May 15, 2020

Residential Tenancy Branch