



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants under the Residential Tenancy Act (the Act) seeking:

- An Order of Possession; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants, both of whom provided affirmed testimony. No one attended on behalf of the Landlord.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and all of the documentary evidence to be relied on by the applicants. As no one attended the hearing on behalf of the Landlord, I inquired with the Tenants regarding service of these documents as explained below.

In the hearing the Tenants testified that although they had attempted to serve the Landlord in person within one day of receiving the Notice of Dispute Resolution Proceeding Package from the Residential Tenancy Branch (the Branch) as required for their expedited Application, the Landlord's office was closed. The Tenants stated that they made no further attempts to serve the Landlord and as a result, the Landlord had not been served with a copy of the Application, the Notice of Hearing, or any of the documentary evidence before me.

Section 59 (3) of the Act states that except for an application referred to in subsection (6), 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.

Rule 10.3 of the Rules of Procedure states that the applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the 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 (RTB-114E) 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, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

Based on the above, and as the Tenants applied for an expedited hearing pursuant to rule 10 of the Rules of Procedure, I find that they were required to serve the Landlord with the above noted documents within one day of the Notice of Dispute Resolution Proceeding being made available to them by the Branch. As the Tenants stated that they had not served the Landlord, I find that they failed to comply with both section 59 (3) of the Act and rule 10.3 of the Rules of Procedure.

Further to this, I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlord was not served with the Application, Notice of Hearing, or the evidence before me for consideration from the Tenants, I find that they did not have a fair opportunity to know the case against them, to appear at the hearing, or to submit evidence for my consideration in their defense. Based on the above, I find that it would be a breach of the Act, the Rules of Procedure, and the principles of natural justice to proceed with the hearing as scheduled.

Although I provided the Tenants with the option of adjourning the hearing in order to allow them the opportunity to serve the Landlord, the Tenants declined in the hopes of obtaining a faster hearing by filing a new expedited Application with the Branch. As a result, I dismissed the Tenants' Application seeking an Order of Possession for the

rental unit with leave to reapply. As the Application was dismissed, I decline to grant recovery of the filing fee.

Conclusion

The Tenants' Application seeking recovery of the filing fee is dismissed without leave to reapply.

The Tenants' Application seeking an Order of Possession for the rental unit is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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: August 27, 2020

Residential Tenancy Branch