



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”) to enforce a One Month Notice to End Tenancy for Cause (the “Notice”) issued July 6, 2020, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, the Landlord’s Agent and both Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord, the Landlord’s Agent and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter—Service of the Notice of Dispute Resolution Hearing Documentation

The Tenants testified that they had just been served with the Notice of Dispute Resolution Hearing documentation on October 16, 2020.

The Landlord’s Agent testified that they had personally posted the Notice of Dispute Resolution Hearing documentation to the Tenants’ door on September 11, 2020.

I find that the parties, in this case, offered conflicting verbal testimony regarding the service of the Notice of Dispute Resolution Hearing documentation. In cases where two

parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that is the Landlord.

The Landlord's Agent argued that since they worked for an eviction services company, they were an independent third party with no stake in these proceedings, so their verbal testimony should be sufficient to prove service.

The Landlord's Agent was advised that as "Agent" for the Landlord, hired by the Landlord to represent them in today's proceedings, I find that they are not an independent third party and that they do have a stake in today's proceedings.

The Landlord was asked to provide supporting documentation to show that the Notice of Dispute Resolution Hearing documentation had been served as they claimed, on September 11, 2020.

The Landlord's Agent demanded to know what difference a signed "proof of service" document, from them, would prove in these proceedings. This Arbitrator again advised the Landlord that documentation was required to prove this point, or these proceedings would not continue.

The Landlord's Agent became argumentative with this Arbitrator, refusing to follow direction, and became disrespectful to this Arbitrator. In order to regain control of these proceedings, this Arbitrator was forced to mute the Landlord's Agent's phoneline.

As the Landlord and the Landlord's Agent had called in from two separate phone lines, the Landlord remained in these proceedings. The Landlord was advised that they may want to seek legal advice regarding methods to prove the service of documents during a hearing.

Section 3.1 of the Residential Tenancy Branch stated the following:

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) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5

I find that the Landlord has not satisfied me that the Tenants had been duly served with the Notice of Hearing in accordance with the *Act*.

Therefore, I must dismiss the Landlord application with leave to reapply. This decision does not extend any legislated timelines pursuant to the *Act*.

Conclusion

I dismiss the Application for Dispute Resolution with leave to reapply; however, this does not extend any applicable time limits under the legislation. I have not made any findings of fact or law with respect to the Application.

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 19, 2020

Residential Tenancy Branch