



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPU-DR-PP, OPUM-DR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on July 21, 2020 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent and utilities;
- a monetary order for unpaid rent and utilities; and
- the return of the filing fee.

The hearing was scheduled for 11:00 AM on November 5, 2020 as a teleconference hearing. The Landlord and the Landlord's Agent appeared at the appointed date and time of the hearing and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord, the Landlord's Agent and I were the only persons who had called into this teleconference.

The Landlord and the Landlord's Agent were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

The Landlord's Agent testified that the Notice of Adjourned hearing and documentary evidence package were served to the Tenants in person sometime in October 2020. The Landlord's Agent then had a discussion with the Landlord before stating that the documents were served to the Tenant on September 16, 2020. When the Landlord was notified that the decision to adjourn the Landlord's Application to a participatory hearing was made on September 17, 2020, the Landlord's Agent responded by stating that the Landlord attempted to served the above mentioned documents to the Tenants in person sometime after October 20, 2020, however, the Tenants refused service.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure 3.1 (the “Rules of Procedure”); 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 [Documents that must be submitted with an Application for Dispute Resolution].*

Section 89 of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution: 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) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director’s orders: delivery and service of document]...*

The Residential Tenancy Branch Policy Guideline 12 (the “Policy Guidelines”) states that; all parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

In this case, I find that the Landlord’s Application for Dispute Resolution by Direct Request was made on July 21, 2020 and adjourned to a participatory hearing on September 17, 2020. I find that a new Notice of hearing for the adjourned hearing was

sent to the Landlord on September 18, 2020 with instructions to serve each respondent no later than September 21, 2020.

I find that the Landlord provided no evidence to demonstrate that they served each Respondent with the Notice of the Adjourned hearing. As such, I am not satisfied that the Tenants were made aware of the adjourned hearing which may explain why they were not in attendance at the time of the hearing.

Furthermore, I find that while the Landlord's Agent stated that the respondents were served in person, which is an approved form of served under Section 89 of the Act, I find that the Landlord was unsure as to what date the above mentioned documents were sent to the Tenants, or that it was served within three days in accordance with Section 3.1 of the Rules of Procedure.

In light of the above, I dismiss the Landlord's Application 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*.

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: November 05, 2020

Residential Tenancy Branch