



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 13, 2020 (the "Application"). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property; and
- To recover the filing fee.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. The Tenant provided affirmed testimony.

The Tenant originally named two landlords on the Application. The Tenant sought to amend this at the hearing and asked that the second landlord be removed as they no longer act as agents for the owner. I have removed the second landlord from the style of cause.

The Tenant advised that he vacated the rental unit November 02, 2020. The Tenant said he wanted to withdraw the Application.

Rule 5.0.1 states:

Withdrawing an application to dispute a notice to end tenancy

Where a tenant has applied to dispute a landlord's notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application

Given rule 5.0.1, I did not permit the Tenant to withdraw the Application in the absence of the Landlord's consent.

I proceeded to ask the Tenant about service of the hearing package on the Landlord. The Tenant testified that he did not serve the hearing package on the Landlord.

Section 59(3) of the *Residential Tenancy Act* (the “*Act*”) states:

(3) 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.

(emphasis added)

Rule 3.1 of the Rules of Procedure (the “*Rules*”) states:

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].

(emphasis added)

I am not satisfied the Tenant served the hearing package on the Landlord as required by section 59(3) of the *Act* and rule 3.1 of the *Rules*. The Landlord did not appear at the hearing. In these circumstances, the Application is dismissed given the lack of service.

The request to recover the filing fee is dismissed without leave to re-apply. I am not satisfied the Tenant is entitled to recover the filing fee given he did not serve the hearing package as required and was not successful on the Application.

The remaining request is dismissed with leave to re-apply. However, as explained to the Tenant at the hearing, the remaining issue is a moot point given the Tenant has vacated the rental unit. Further, this decision does not extend any time limits set out in the *Act*.

Conclusion

The Application is dismissed given a lack of service of the hearing package. The request to recover the filing fee is dismissed without leave to re-apply. The remaining request is dismissed with leave to re-apply; however, is a moot point given the Tenant has vacated the rental unit. 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: November 05, 2020

Residential Tenancy Branch