



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an order of possession pursuant to section 56;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord and his translator/spouse, B.S. (the landlord) attended the hearing via conference call and provided testimony. The tenant did not attend or submit any documentary evidence. At the outset, the landlord stated that he had a witness, A.K. available for the hearing. The landlord was instructed that an order excluding witnesses was being made and that the landlord's witness could be called back into the hearing by the landlord at the appropriate time.

Repeated attempts over a 35 minute period with the assistance of the landlord's translator revealed that the tenant was served with the notice of hearing package in person on February 4, 2021. No Proof of service was provided. Repeated attempts over an additional 20 minute period with the assistance of the landlord's translator revealed that the landlord did not serve the landlord's submitted 12 document evidence files to the tenant. The landlord stated that his witnesses were afraid for their safety and were unwilling to provide any evidence if the tenant was provided with their evidence. The landlord stated that an exception be made to allow the landlord's evidence. Residential Tenancy Branch, Rules of Procedure, Rule #3, states in part,

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 [Documents that must be submitted with an Application for Dispute Resolution].***

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

In this case, the landlord provided affirmed testimony that the tenant was not served with the submitted documentary evidence. On this basis, I find that the landlord's documentary evidence shall be excluded from consideration in this decision for lack of service upon the tenant.

The landlord's application was clarified as the landlord's address and that of the named tenant are the same. The landlord clarified that he does not live at the rental unit but uses the mailing address for contact with his tenant due to safety issues. As such, the hearing shall proceed on this basis.

Repeated attempts over another 20 minute period resulted in the landlord's application being dismissed with leave to reapply. Despite repeated attempts, the landlord's communication even with the assistance of his translator/spouse were found insufficient. The landlord would repeatedly answer the Arbitrator's question with details for an unrelated issue. Despite repeated attempts inquiring if the landlord's translator understood the question, the landlord would instead answer that he did, but failed to provide the answer to the question. The landlord and his translator would then repeatedly ask the Arbitrator to repeat the question, despite stating that they understood the question. The landlord requested assistance from the Arbitrator and what he should do. The landlord was advised that the Arbitrator could not provide any advice but referred the landlord and cautioned him to obtain a translator that could assist him in asking questions of the Residential Tenancy Branch Information Officers and to help during a dispute resolution hearing. The landlord repeatedly argued that their safety and that of their other tenants were at risk. The landlord was advised to contact the

local police if they or their tenants feared for their safety. The landlord was cautioned that it is ultimately the responsibility of the applicant to present their application and any evidence that is being relied upon for consideration by an Arbitrator. The landlord was found to not have an adequate translator to assist him in presenting his case.

The landlord's application was dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: February 22, 2021

Residential Tenancy Branch