Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR-DR, OPRM-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on February 02, 2021 (the "Application"). The Landlords applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- To recover unpaid rent
- For reimbursement for the filing fee

This was an adjourned direct request.

The Landlord attended the hearing 11 minutes late. Nobody attended the hearing for the Tenant. I explained the hearing process to the Landlord. I told the Landlord they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlord provided affirmed testimony.

The Landlord advised at the outset that the Tenant vacated the rental unit February 18, 2021. The Landlord confirmed an Order of Possession was no longer required.

The Application originally named four tenants. The Landlord advised that two of the named tenants were children and therefore I have removed them from the Application and style of cause. The Landlord acknowledged there was only a tenancy agreement between the Landlords and Tenant and not T.D. Therefore, I have removed T.D. from the Application and style of cause.

Preliminary Issue – Service

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package. The Landlord testified that the hearing package was served on the Tenant in January of 2021. I told the Landlord this could not be correct because the Application was filed February 02, 2021 and the Interim Decision and a new Notice of Hearing was sent to the Landlords March 02, 2021 and April 15, 2021. The Landlord then testified that they did not serve the hearing package for this hearing on the Tenant because they do not have contact information for the Tenant.

The Interim Decision for the direct request proceeding issued March 02, 2021 states:

> Considering the above, I find it appropriate to order that the Direct Request Proceeding be reconvened in accordance with section 74 of the Act. I find that a participatory hearing to be conducted by an arbitrator appointed under the Act is required to determine the details of the Landlords' application.
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> **Notices of Reconvened Hearing are enclosed with this interim decision. The Landlords must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the Tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.**
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> Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf that explain evidence and service requirements.

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.

Rule 3.1 of the Rules states:

> 3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package
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> 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;
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> b) the Respondent Instructions for Dispute Resolution;
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> c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
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> 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].

The Landlords were required to serve the Tenant with the hearing package provided March 02, 2021. The Landlords did not serve the Tenant with the hearing package. Given this, the Application is dismissed with leave to re-apply, other than the request for reimbursement for the filing fee which is dismissed without leave to re-apply.

I told the Landlord during the hearing that the hearing package had to be served in accordance with section 89(1) of the *Residential Tenancy Act* (the "*Act*") which states:

> 89 (1) 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 documents];

(f) by any other means of service provided for in the regulations.

I also explained to the Landlord that any future hearing packages for Applications for Dispute Resolution will need to be served in accordance with section 89(1) of the *Act*.

Conclusion

The Application is dismissed **with** leave to re-apply, other than the request for reimbursement for the filing fee which is dismissed **without** leave to re-apply.

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: May 27, 2021

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Residential Tenancy Branch