



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0922046 B.C.LTD. (GOLD PAN
MOTEL) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with the Application by the Landlord filed under the Residential Tenancy Act (the “Act”) for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on June 24, 2021, and to recover the filing fee paid for this application. The matter was set for a conference call.

Three individuals for the Landlord (the “Landlord”) attended the hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the Act states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they mailed the Notice of Dispute Resolution Hearing documents to the Tenants on August 9, 2021 and submitted two Canada post tracking numbers as evidence of service.

Section 59(3) of the Act and the Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

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].”

I have reviewed the Notice of Hearing document created for these proceedings, noting that this document was created and given to the Landlord on July 24, 2021. However, this document was not given to Canada Post for delivery until August 9, 2021, 15 days after the document was created.

When asked, the Landlord testified that they had not seen the email from the Residential Tenancy Branch containing the Notice of Hearing document until August 15, 2021, but that they had sent the document to the Tenants the same day they found the email.

I find that the Landlord’s explanation for the delayed service of the Notice of Hearing documents to be insufficient grounds to extend the service requirements for this document. Consequently, I find that the Tenants have not been duly served the notification of this hearing documents as required, pursuant to section 59 of the *Act*.

Additionally, during these proceedings was noticed that the Landlord listed on the application for these proceedings was different than the Landlord listed on Notice to end tenancy. The Landlord testified that they run a motel normally under the *Inn Keepers Act* and that the name on the application is the business name of the motel, and that the name on the Notice is their personal name.

The Landlord testified that there is no tenancy agreement for this tenancy but that the Tenants have been residing in the motel since April 1, 2020, on a month-to-month basis. As this Notice and application list two different Landlords, and in the absence of a tenancy agreement or incorporation documentation for this business, I am unable to accurately determine the legal name of the Landlord for this tenancy.

Finally, the Landlord testified that they had made amendments to the Notice but had not served the amended Notice to the Tenants. I find that there was a requirement for the Landlord to serve the amended Notice to the Tenants.

For the reasons listed above, I decline to issue the Landlord an Order of Possession, and I must dismiss the Landlord's application.

Conclusion

I dismiss the Application for Dispute Resolution.

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: August 26, 2021

Residential Tenancy Branch