



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, OLC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, under section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord WP and tenants AB (the tenant) and GP attended the hearing. The landlord was assisted by advocate KH (the landlord). Witness for the tenants TK also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I note the hearing started at 11:00 A.M. and the tenants only called at 11:20 A.M.

The attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant affirmed she served the notice of hearing dated July 23, 2021 and the evidence (the materials) by registered mail on August 12, 2021. Later the tenant stated she is not sure when the package containing the materials was mailed. The tenant could not provide the tracking number.

The landlord testified she received the package containing the materials on August 18, 2021. The landlord said the package was mailed on August 12, 2021 and provided the tracking number (recorded on the cover page of this decision). The landlord affirmed she did not have enough time to review the materials.

Rules of Procedure 3.1 and 3.14 state:

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].

3.14 Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.**

(emphasis added)

The Rules of Procedure provide that: "In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded".

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed.

Based on the convincing testimony provided by the landlord and the tracking number, I find the tenants served the materials on August 12, 2021 and the landlord is deemed to have received the materials on August 17, 2021, in accordance with section 90 (a) of the Act. Thus, the tenants did not serve the materials within three days of when the notice of hearing was made available by the Residential Tenancy Branch and the landlord is deemed to have received the materials less than 14 days before the hearing.

I find the tenants did not serve the materials in accordance with section 89 of the Act and the Rules of Procedure 3.1 and 3.14.

Conclusion

I dismiss the tenants' application for an order for the cancellation of the Notice and for an order for the landlord to comply with the act with leave to reapply. Leave to reapply is not an extension of the timeline to apply.

I dismiss the tenants' application for an authorization to recover the filing fee without leave to reapply.

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: September 01, 2021

Residential Tenancy Branch