



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: CNR, LRE, FFT
Landlord's application: OPR-DR, MNR-DR

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice to end tenancy) pursuant to section 46;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession the Notice to end tenancy, under sections 46 and 55; and
- a monetary order for unpaid rent, pursuant to section 26.

I left the teleconference connection open until 1:52 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agent WD (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord affirmed he understands it is prohibited to record this hearing and that he must be civil and orderly at all times. 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."

Service of the tenants' application

The landlord affirmed he did not receive the notice of hearing for the tenant's application and that he was not aware of the tenant's application.

Rule of Procedure 3.1 states:

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].

(emphasis added)

Based on the landlord's testimony, I find the tenant did not serve the notice of hearing.

Service of the landlord's application

After eleven minutes waiting for the landlord to review his notes and provide testimony about service of the notice of hearing to the tenant, the landlord stated his brother texted him to say he went to a Service BC office to serve the notice of hearing.

The landlord was unable to confirm the notice of hearing was given to the tenant using any of the methods provided for in section 89 of the Act. I cannot conclude the tenant is aware of the landlord's application and the proceeding today.

Conclusion

Both applications are dismissed with leave to reapply due to the applicants' failure to notify the other party of their application.

Leave to reapply is not an extension of the timeline to 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 *Residential Tenancy Act*.

Dated: October 21, 2021

Residential Tenancy Branch