



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC**

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* ("Act") for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated May 27, 2021 ("1 Month Notice") pursuant to section 47 of the Act.

The Landlord's agent ("Agent") appeared at the participatory hearing. The Tenant did not attend the hearing even though I left the teleconference hearing connection for the entire duration of the hearing scheduled for 9:30 am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding generated when the Landlord applied. I also confirmed throughout the duration of the hearing that the Tenant was not in attendance.

The Agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Landlord's Application on Tenant:

The Agent stated that, due to an inadvertent error, the NOH Package had not been served on the Tenant within 3 days of the Notice of Dispute Proceeding being emailed to the Landlord on July 12, 2021.

The Agent testified that the Notice of Dispute Resolution Proceeding Hearing and the Landlord's evidence ("NOH Package") was served on the Tenant by registered mail on October 1, 2021. The Agent submitted a registered mail receipt which provided the tracking number of the NOH Package to corroborate his testimony regarding service.

Section 89(1) of the Act outlines the methods of service for an application for dispute resolution, which reads in part as follows:

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}.

Rule 3.1 of the Residential Tenancy Branch *Rules of Procedure* ("RoP") states the following, in part (my emphasis added):

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].

The above information regarding service of a landlords' application package within 3 days of being provided by the Residential Tenancy Branch, is contained on page 1 of 6 on the RTB-114 "Residential Tenancies Fact Sheet: The Dispute Resolution Process." This document was provided to the Landlord with its application package for this hearing.

The Landlord had ample time from receiving the Notice of Dispute Proceeding Hearing ("NOH") to serve it in a timely manner, prior to this hearing date of October 18, 2021. Accordingly, I find that the Landlord did not serve the Tenant with the NOH in a timely manner as required by section 89 of the *Act* and Rule 3.1 of the RoP.

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them and have an opportunity to attend the hearing and make submissions in defense of the claims made. Section 89 of the *Act* and Rule 3.1 contain specific requirements about service to ensure that this principle is observed. Granting an Order of Possession to the Landlord without adequate notice to the Tenant in accordance with these requirements would be a denial of the Principles of Natural Justice.

Based on the foregoing, I dismiss the Landlord's application seeking an Order of Possession with leave to reapply.

Conclusion

The Landlord's application seeking an Order of Possession is dismissed with 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: October 18, 2021

Residential Tenancy Branch