



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0422515 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

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 tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by managers BF and FF. Witnesses for the tenant BC and CM also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing 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 submitted a paper application for dispute resolution (RTB 12T) on September 01, 2021 and the notice of hearing is dated September 23, 2021.

The tenant asked for an adjournment because she is sick and affirmed that she asked witness BC to serve the notice of hearing. BC stated that on September 27, 2021 she served an envelope to landlord FF and that she is not sure if the notice of hearing was in the envelope.

Landlord FF confirmed receipt of the envelope on September 27, 2021 containing only the paper application. Landlord BF testified he called the Residential Tenancy Branch (RTB) on January 17, 2021 to inquire about service of a notice to end tenancy and

learned about this hearing. The RTB emailed a courtesy copy of the notice of hearing to the landlord on January 17, 2021.

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)

I find the tenant and her witness were able to provide the testimony necessary regarding service of the notice of hearing. Thus, I deny the tenant's request to adjourn this hearing due to medical reasons.

I find the testimony offered by witness BC was vague. Based on the convincing testimony offered by the landlord's representatives FF and BF, I find the tenant did not serve the notice of hearing. Per Rule of Procedure 3.1, the tenant (applicant) must serve the notice of hearing, not only the paper application.

The hearing cannot proceed fairly when the respondent has not been notified of the hearing in accordance with Rule of Procedure 3.1.

Conclusion

I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

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: January 31, 2022

Residential Tenancy Branch