



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FF

Introduction, Preliminary and Procedural Matters-

This hearing convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated October 4, 2021, which should be read in conjunction with this decision.

In the Interim Decision, the adjudicator ordered the following:

The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

After the hearing, the landlord applied for an order for substituted service allowing them to serve the tenant the required documents for the reconvened hearing by email as the tenants abandoned the rental unit and have not provided a forwarding address.

In a Decision dated October 7, 2021, the adjudicator dismissed the landlord's request to serve the tenant HK the required hearing documents by email, due to insufficient evidence that the tenant would receive the documents.

At the participatory hearing, the landlord's agent (agent) attended the teleconference hearing. The tenants did not attend the hearing. For this reason, service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) evidence was considered.

The landlord testified that they served the tenant the Notice of Reconvened Hearing, the interim decision, and all other required documents by email.

The tenant was not in attendance at the hearing.

Analysis and Conclusion

Section 89(1) of the Act requires that the application for dispute resolution, which includes the notice of hearing, must be given, by personally handing the documents to the tenant or by registered mail to the tenant's address where they reside or to their forwarding address, as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*] or by any other means of service provided for in the regulations.

Section 89(2) of the Act additionally allows service of the application for an order of possession of the rental unit by attaching the documents to a door or other conspicuous place at the address where the tenant resides.

In this case, the landlord sought authority to serve the tenant by email and that request was dismissed by an adjudicator with the RTB.

The RTB Rules of Procedure 3.5 states that at the hearing, the applicant must be prepared to demonstrate service to the satisfaction of the arbitrator.

In the case before me, I find that the landlord submitted insufficient evidence to show that the tenant was served the Application for Dispute Resolution as required. The landlord was not granted authority to serve the tenants by email and yet they did.

For this reason, I therefore find the landlord submitted insufficient evidence that they served the tenants their application for dispute resolution in a manner required by the Act.

Both parties have a right to a fair hearing and the tenant would not be aware of the hearing without having been served the Notice of a Dispute Resolution Hearing and application as required by the Act.

I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

As I have not considered the merits of the landlord's application, I dismiss their request 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 8, 2022

Residential Tenancy Branch