



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1269123 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, OLC, AAT, OT

Introduction

On October 04, 2021 the Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities. The Landlord in this Application for Dispute Resolution is a numbered company and the Respondent Tenant is an individual with the initials "DD".

On December 30, 2021 the Tenant filed an Application for Dispute Resolution in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, for an Order requiring the Landlord to provide the Tenant with access to the rental unit, and for an Order requiring the Landlord to return personal property. The Tenant in this Application for Dispute Resolution is an individual with the initials "SAH" and the Respondent Landlord is an individual with the initials "DBD".

Both Applications for Dispute Resolution relate to the upper unit of the same address and, as such, were joined by the Residential Tenancy Branch.

Issue(s) to be Decided

Is the Landlord that is a numbered company entitled to an Order of Possession?

Is there a need to issue an Order granting "SAH" access to the rental unit?

Is there a need to issue an Order requiring "DBD" to return personal property to "SAH"?

Background and Evidence

The Agent for the Landlord that is a numbered company stated that on October 10, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch was left in the mail slot at the rental unit.

The Agent for the Landlord that is a numbered company stated that he has been served with no documents relating to the Application for Dispute Resolution filed by “SAH”.

This hearing was scheduled to commence at 9:30 a.m. on February 14, 2021. The Agent for the Landlord that is a numbered company had joined the teleconference by the time I dialed into the teleconference at 9:31 a.m. By the time the teleconference was concluded at 9:50 a.m., neither the Tenant with the initials “SAH”, who is the Applicant in the second Application for Dispute Resolution, nor Landlord with the initials “DBD”, who is the Respondent in the second Application for Dispute Resolution, had attended the hearing.

I confirmed that the correct access codes had been provided in the notice of hearing for each Application for Dispute Resolution.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a Respondent is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the Applicant.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Residential Tenancy Act (Act)*. The Landlord that is a numbered company bears the burden of proving their hearing documents were served to “DD” in accordance with section 89(2) of the *Act*.

Section 89(2) of the *Act* permits a party to serve an Application for Dispute Resolution relating to sections 55, 56, or 56.1 of the *Act* in the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;

- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

Section 43(3) of the *Residential Tenancy Regulation* stipulates that documents described in section 89(2) of the *Act* may, for the purposes of section 89(2)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

As there is no evidence that the Landlord that is a numbered company served the hearing documents to "DD" in person, by registered mail, by email, or by leaving them with an adult who lives with "DD", I cannot conclude that the hearing documents were served to "DD" in accordance with sections 89(2)(a)(b)(c) or (f) of the *Act*.

As there is no evidence that the Landlord that is a numbered company served the hearing documents to "DD" in a different manner authorized by the Residential Tenancy Branch, I cannot conclude that the hearing documents were served to "DD" in accordance with section 89(2)(e) of the *Act*.

While I accept that the Agent for the Landlord that is a numbered company placed the hearing documents in the mail slot at the rental unit, I find that is not a method of service permitted by section 89(2) of the *Act*. Section 89(2)(d) of the *Act* permits service of hearing documents by attaching a copy to a door or other conspicuous place at the address at which the tenant resides. I find this is decidedly different than placing something though a mail slot where it could be lost under furniture or a door mat.

As the Landlord that is a numbered company has failed to establish that hearing documents were served to "DD" in accordance with section 89(2) of the *Act*, I am unable to consider the merits of the Application for Dispute Resolution in the absence of "DD". The Landlord's Application for Dispute Resolution is therefore dismissed, with leave to reapply.

Section 61 of the *Residential Tenancy Act (Act)* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing

and that the director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for a teleconference hearing.

Rule 10.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I find that the Tenant's Application for Dispute Resolution has been abandoned, as it the Tenant did not attend the hearing in support of the Application for Dispute Resolution. The Tenant's Application for Dispute Resolution is therefore dismissed, with leave to reapply.

Conclusion

As the Landlord has failed to establish that the Landlord's Application for Dispute Resolution was properly served to "DD", the Landlord's Application for Dispute Resolution is dismissed, with leave to reapply.

As the Tenant has abandoned the Tenant's Application for Dispute Resolution, the Tenant's Application for Dispute Resolution 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 *Act*.

Dated: February 14, 2022

Residential Tenancy Branch