



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's file *****730: CNR
Landlords' file *****825: OPR-DR, MNR-DR, FFL
Tenant's file *****180: MNDCT, CNR, RP, RR, OLC
Landlords' file *****359: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear four applications regarding the above-noted tenancy.

The tenant applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on March 02, 2022, pursuant to section 46 (file *****730).

The landlords applied for (file *****825):

- an order of possession under a 10 Day Notice to End Tenancy for Unpaid Rent served on April 04, 2022, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

The tenant applied for (file *****180):

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on April 04, 2022, pursuant to section 46;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62.

The landlords applied for (file *****359):

- an order of possession under a 10 Day Notice to End Tenancy for Unpaid Rent served on March 02, 2022, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

The files numbers are recorded on the cover page of this decision.

I left the teleconference connection open until 9:40 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by property manager OP (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 attending party affirmed he understands the parties are not allowed 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 \$5,000.00.”

Tenant's applications

The landlord affirmed he did not receive the notices of hearings from the tenant's applications and did not know that the tenant submitted two applications.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenants' applications dismissed without leave to reapply (files *****730 and *****180).

Landlords' applications

The landlord affirmed he did not serve the notice of hearing for file *****825 because he did not receive it from the Residential Tenancy Branch (RTB). I informed the landlord that the RTB emailed the landlords the notice of hearing for file *****825 on April 28, 2022.

The landlord affirmed he served the notice of hearing for file *****359 in person. The landlord does not know when he served it.

Section 89(1) of the Act states:

- (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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];
 - (f)by any other means of service provided for in the regulations.

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)

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

I accept the landlord's testimony that he did not serve the notice of hearing for file *****825.

The landlord does not know when he served the notice of hearing for file *****359. The landlord did not submit documentary evidence to prove the service. Based on the landlord's vague testimony, I find the landlords did not serve the notice of hearing for the landlords' file *****359.

As the landlords did not service the notices of hearing, I dismiss the landlords' applications leave to reapply (files *****825 and *****359). Leave to reapply is not an extension of timeline to apply.

The landlords must bear the cost of the filing fees, as the landlords were not successful.

Conclusion

I dismiss the tenant's applications (files *****730 and *****180) without leave to reapply.

I dismiss the landlords' applications (files *****825 and *****359) 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: June 27, 2022

Residential Tenancy Branch