



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served a 10 Day Notice dated May 17, 2022 ("10 Day Notice"); with a request for a monetary order of \$2,800.00 for outstanding unpaid rent from the Tenant; and to recover her \$100.00 Application filing fee.

An agent for the Landlord, V.H.L. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. However, the Agent said that he did not attempt to serve the Tenants with his Notice of Hearing documents or evidence, because the Tenants refused to take any documents from him in a prior hearing. Further, the Agent said that the Tenants moved out in the last week in June 2022 and that he does not know to where they moved. The Agent also said he did not have the Tenants' email address for service of documents.

This hearing was initially rendered on an *ex parte* basis through direct request, but that was adjourned to the participatory hearing scheduled for today. In the adjudicator's interim decision adjourning this matter, she said that the Agent told her that the Notice of Hearing documents were served by posting a notice to the rental unit door. However, this is not what the Agent told me in the hearing.

I advised the Agent that I would review the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") after the hearing and confirm my expectation that I must dismiss this claim for lack of service. The Agent said that in the previous hearing, he had served the Tenants by attaching a copy of the Notice of Hearing documents to the rental unit door, pursuant to section 89 (2) of the Act.

Pursuant to Rule 3.1, an applicant is required to serve the respondent(s) with a copy of the Notice of Hearing documents and evidence within three days of the Notice of Hearing package being made available the applicant by the RTB. Rule 3.1 states:

Rule 3.1 states that the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the RTB, 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].

I find I am required by the Act and Rules to dismiss this Application without leave to reapply, as I find that there is insufficient evidence before me that the Respondents were served with the Landlord's Notice of Hearing documents and evidence pursuant to the Act and Rules. Accordingly, I **dismiss this Application without leave to reapply**, pursuant to section 62 of the Act.

If you need any of this explained further, please don't hesitate to call the RTB office and speak with an information officer for clarification of any residential tenancy matter.

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: November 07, 2022

Residential Tenancy Branch