



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on June 30, 2022 seeking an order of possession of the rental unit, as well as recovery of money for unpaid rent. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 17, 2022.

The Landlord only attended the telephone conference call hearing at the scheduled time. An occupant of the rental unit joined the teleconference hearing at 21 minutes into the call; the property manager, as a witness for the Landlord, joined at 36 minutes.

Preliminary Matter – Disclosure

The Landlord presented that they forwarded notice for this hearing to the Tenant via registered mail. As shown by the postal receipt provided by the Landlord in their evidence, this was on July 20, 2022. This included evidence they prepared with their Application on June 30, 2022.

The Residential Tenancy Branch provided the Notice of Dispute Resolution Proceeding (the “Notice”) to the Landlord on July 14, 2022. That date appears on the Notice. The Notice specifies that the *Residential Tenancy Branch Rules of Procedure* apply to the dispute resolution proceeding. Rule 3.1 specifies:

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 . . .

I find the evidence shows the Landlord did not provide the Notice within three days as required. The postal receipt provided by the Landlord shows they sent the information – from Ontario to British Columbia – on July 20, 2022. This is not within the required three-day time period as specified in the *Rules*.

In the hearing, a third party joined the conference call. They received a copy of the Notice the day prior to the scheduled hearing, slid under the door at the rental unit. This third party stated that the Tenant, so named as the Respondent in this hearing, moved out from the rental unit some time prior. This third party also stated they had some occupancy acknowledgement in place with the property manager. The Landlord was not aware of this. The Property Manager who then entered the conference call provided that the Tenant moved out “over 6 months ago.”

In sum, I conclude that the Tenant, with whom the Landlord had a tenancy agreement in place, moved out from the rental unit.

I dismiss the Landlord’s request for an order of possession – with leave to reapply – because the Landlord did not serve the Notice to the Tenant within the timeline required, as set out via the *Rules* above.

The Landlord was not aware of neither the status of this tenancy, nor the fact that others have resided in the rental unit, without a tenancy agreement, for quite some time. They must rectify this situation before making a similar Application in regard to this tenancy. I granted the Landlord leave to reapply; however, I find the Tenant, so named as the Respondent, more likely than not did not receive the 10-Day Notice to End Tenancy, served by the Landlord via regular mail.

The Landlord claimed reimbursement for rent amounts owing and reimbursement of the Application filing fee. I dismiss these pieces of the Landlord’s Application *without* leave to reapply.

Conclusion

I dismiss the Landlord's Application, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 21, 2022

Residential Tenancy Branch