



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant, the landlord's resident manager and property manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

The property manager confirmed the landlord's email address for service of this Decision. The tenant requested to pick up the Decision from a local service centre.

The tenant testified that she served the landlord with her application for dispute resolution, amendment and evidence via mail on February 16, 2023. The property manager testified that he received the tenant's evidence on February 21, 2023 but that this package did not contain the Notice of Dispute Resolution Proceeding.

The tenant testified that she served the landlord late because she didn't understand the Residential Tenancy Branch process and thought that the Residential Tenancy Branch would serve the landlord.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

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].

The Residential Tenancy Branch made the Notice of Dispute Resolution Proceeding Package available to the tenant on November 2, 2022. Based on the testimony of the property manager, I find that the landlord received the tenant's evidence on February 21, 2023, six clear days before this hearing. I note that the landlord received the above package so close to the hearing that any responding evidence provided by the landlord would be considered late. I also note that the tenant's evidence totalled over 100 pages.

I find that even if the tenant's Notice of Dispute Resolution Proceeding was included in the February 16, 2023 mailing, it would be procedurally unfair to hear the tenant's application for dispute resolution because it was served on the landlord exceptionally late which has deprived the landlord of a full opportunity to review and respond to the claims advanced by the tenant. I dismiss the tenant's application for dispute resolution with leave to reapply for failure to serve in accordance with Rule 3.1 of the *Rules*.

Page 2 of the Notice of Dispute Resolution Proceeding Package that was made available to the tenant on November 2, 2022 states:

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

I find that the tenant's mistake regarding the Residential Tenancy Branch procedure is due to the tenant's failure to properly read the Notice of Dispute Resolution Proceeding Package made available to her on November 2, 2022 and the tenant is therefore not entitled to an adjournment.

The property manager testified that the landlord is not pursuing an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent which the tenant sought to cancel in this application for dispute resolution.

Conclusion

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 *Residential Tenancy Act*.

Dated: February 28, 2023

Residential Tenancy Branch