



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding RUSKIN ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on June 7, 2018. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent, dated December 2, 2023, a monetary order for unpaid rent, and to recover the filing fee paid for the application. The matter was set for a conference call.

An Agent for the Landlord (the "Landlord") attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documents was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Landlord testified that they had personally served the Application for Dispute Resolution, and the Notice of Hearing document to the Tenant on December 28, 2023, by leaving the notice at the front door of the rental unit. The Landlord also testified that they are not sure the Tenant is still living in the rental unit, as they have had no contact with the Tenant since July 2022. The Landlord testified that they submitted pictures of the envelope into documentary evidence.

The Landlord also testified that they had served the Application for Dispute Resolution, and the Notice of Hearing documents to the Tenant by Canada Post Registered mail sent on January 11, 2023. The Canada Post tracking number was provided as evidence of this service.

I have reviewed the totality of the Landlord's submission regarding the service of the Application for Dispute Resolution, and the Notice of Hearing document and noted that the Landlord's written submission on this point does not match the testimony they provided during these proceedings. The Landlord has verbally testified that they left the documents at the front door of their rental unit, but they also wrote in their written submissions that they left these documents with a third party, who also resides at the rental unit.

The Landlord was provided with additional time during these proceedings to clarify their testimony, confirm dates of service and present their evidence on this point. However, the Landlord did not offer any testimony on the discrepancy between their verbal and written submission.

I have reviewed the documentary evidence submitted by the Landlord and noted that the Landlord has submitted three pictures of an envelope into documentary evidence; however, after reviewing these pictures I find that none of these pictures show the address of the property where this envelope was left. I also noted that the Landlord has not included a proof of service form for the service to a third party in their evidence submission.

Overall, I find that I am unable to resolve the conflict between the testimony, the written submissions, and the documentary evidence that I have before me in these proceedings. Due to this, I must find that there is insufficient evidence before me to prove to my satisfaction that the Tenant has been duly served the notification of this hearing documents as required, pursuant to section 59 of the *Act*.

I acknowledge the Landlord's submission that they had also served the Application for Dispute Resolution, and the Notice of Hearing documents to the Tenant by Canada Post Registered mail sent on January 11, 2023.

Section 59 of the *Act* and section 2.5 of the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

2.5 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].”

I have reviewed the Notice of Hearing document, created by the Residential Tenancy Branch, and noted that this document was provided to the Landlord on December 19, 2022, for service on the Tenant.

Accordingly, the Landlord had until December 21, 2022, to serve the Tenant. As this mailing was sent on January 11, 2023, 21 days past the legislated service date, I find that this service was not completed as required, pursuant to section 59 of the *Act* and section 2.5 of the Residential Tenancy Branch Rules of Procedure.

Consequently, I dismiss the Landlord’s application for an order of possession, and a monetary order for unpaid rent with leave to reapply.

I dismiss the Landlord’s application to recover the filing fee paid for this application without leave to reapply.

This decision does not extend any legislated timelines pursuant to the *Act*.

Conclusion

I dismiss the Landlord's application for an order of possession and a monetary order for unpaid rent with leave to reapply.

I dismiss the Landlord's application to recover the filing fee paid for this application without 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: April 24, 2023

Residential Tenancy Branch