



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 643838 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, MNRT, MNDCT, LRE, OLC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- a monetary order for the cost of emergency repairs, under sections 33 and 67;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation, and/or tenancy agreement, pursuant to section 62.

I left the teleconference connection open until 11:14 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M. The landlord did not attend the hearing. Tenant CS (the tenant) 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 tenant and I were the only ones who had called into this teleconference.

The tenant affirmed he left the notice of hearing in the landlord's mailbox two days after he printed it.

Section 89(1) of the Act does not allow the tenant to serve the notice of hearing by leaving it in the mailbox:

(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.

Residential Tenancy Branch Policy Guideline 12 states the arbitrator will decide if the notice of hearing was sufficiently served on the basis of the evidence presented.

Based on the tenant's testimony, I find the tenant failed to prove service of the notice of hearing in accordance with section 89(1) of the Act. The Act does not authorize the tenant to serve the notice of hearing by leaving it in the landlord's mailbox. I find the tenant did not serve the notice of hearing in accordance with the Act.

As the tenant did not serve the notice of hearing in accordance with section 89(1) of the Act, I dismiss the tenant's application.

The tenant stated the tenancy ended on April 03, 2023.

I grant leave for the tenant to reapply for the monetary claims, as I did not hear the merits of the tenant's claims. Leave to reapply is not an extension of the timeline to apply. I do not grant leave for the tenant to reapply for the non-monetary claims, as the tenancy ended.

Conclusion

I dismiss the application. The tenant has leave to reapply for the monetary claims only.

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 05, 2023