



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the landlord's application, filed on March 25, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an order of possession, pursuant to section 56; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two tenants did not attend this hearing. The landlord and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 13 minutes from 11:00 a.m. to 11:13 a.m. I monitored the teleconference line throughout this hearing. 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 landlord, the landlord's agent, and I were the only people who called into this teleconference.

The landlord and his agent confirmed their names and spelling. The landlord provided his email address for me to send this decision to him after the hearing.

The landlord stated that he owns the rental unit. He provided the rental unit address. He identified his agent as the primary speaker for the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord and his agent both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord and his agent. I informed them that I could not provide legal advice to them and they could hire a lawyer for same. I notified them that my role as an Arbitrator is to make a decision regarding this application. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord's Application

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on March 25, 2023, and a notice of hearing was issued to him by the RTB on March 28, 2023. The landlord was required to serve that notice, the application, and all other required evidence in one package to each tenant, within one day of receiving the documents from the RTB, as per RTB *Rule* 10.3.

The landlord's agent testified that both tenants were served with separate copies of the landlord's application for dispute resolution hearing package on March 28, 2023, by way of leaving copies of envelopes, with each tenants' name, on their kitchen table. He claimed that other occupants witnessed this, but the tenants were not present. He said that the landlord provided photographs of the envelopes being left at the tenants' residence.

Rule 10 of the RTB *Rules* states, in part:

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

10.3 Serving the notice of dispute resolution proceeding package

The applicant must, within one day 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:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- the Respondent Instructions for Dispute Resolution;*
- an Order of the director respecting service;*
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and*

- *evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].*

The landlord was provided with an application package from the RTB, including instructions regarding the hearing process. The landlord's agent confirmed that the landlord was provided with a document entitled "Notice of Dispute Resolution Proceeding," dated March 28, 2023 ("NODRP") from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

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.

- ***It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.***
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

Section 89(2) of the Act states the following:

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*

- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (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 Policy Guideline 12 states the following, in part (emphasis in original):

4. SPECIAL REQUIREMENTS FOR SERVICE OF DOCUMENTS for:

□ An application by a landlord for an order of possession

□ An application by a landlord for an order ending tenancy early

All parties named on an application for dispute resolution must be served separate notice of proceedings, including any supporting documents submitted with the application, as set out in the Legislation. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. Failure to serve evidence properly may result in that evidence not being considered and the hearing proceeding, or the hearing being adjourned (see also "Parties not served" in section 15 below).

There are only five methods of service that may be used for these matters. These are:

Personal Service

o Where a landlord is personally serving a tenant, the landlord must leave a copy with the tenant, or by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. The landlord must leave a copy for each cotenant.

This requires actually handing a copy of the document to the person being served. If the person declines to take a copy of the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

Registered Mail

o Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing.

Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

Posting

o By attaching a copy to a door or other conspicuous place at the address at which the tenant resides. A conspicuous place is one that is clearly visible and likely to attract notice or attention. Placing a copy of the document under the door is not recognized by the Legislation.

Email

o In order to serve documents by email, the party being served must have provided an email address specifically for service purposes. If there is any doubt about whether an email address has been given for service purposes, an alternate method of service should be used.

A Residential Tenancy Branch Order Regarding Service

o See “Orders for substituted service” in section 13 below and “Proof of service” in section 14 below.

According to the RTB online dispute access site, the landlord was sent an email by the RTB on March 28, 2023, to serve the tenants with his application by March 29, 2023.

I find that the landlord failed to provide sufficient documentary or testimonial evidence that both tenants were served with the landlord’s application for dispute resolution hearing package, as required by section 89 of the *Act*, Residential Tenancy Policy Guideline 12, Rule 10 of the RTB *Rules*, and the NODRP.

I informed the landlord and his agent that leaving copies of the landlord’s application on the tenants’ kitchen table inside the rental unit, is not a permitted method of service, pursuant to section 89 of the *Act*. I find that it is not considered posting a copy to a door or other conspicuous place. The landlord’s photographs submitted with this application, show the envelopes on a table filled with many other items, among other cluttered items inside the tenants’ rental unit. I find that it is not personal service, since the tenants were not present. The tenants did not appear at this hearing to confirm receipt of the above documents.

The landlord had ample time prior to this hearing, to serve the tenants properly and provide proof of same. The landlord filed this application on March 25, 2023, he was sent the NODRP by the RTB on March 28, 2023, and this hearing occurred on April 11, 2023.

I informed the landlord and his agent that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee, which was dismissed without leave to reapply. I notified them that the landlord could file a new application and pay a new filing fee, if the landlord wants to pursue this matter in the future. They affirmed their understanding of same.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application 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: April 11, 2023

Residential Tenancy Branch