



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This application was scheduled to deal with cross applications. The tenant applied for monetary compensation against the landlord for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for monetary compensation from the tenant for damage to the rental unit and damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Service of hearing documents

When the hearing commenced the landlord was not present and I enquired about service of the tenant's hearing package upon the landlord. The tenant sent her hearing package to the landlord using a courier service. I informed the tenant that courier service is not a permissible method of service. I also noted that the tenant had filed an Application for Dispute Resolution against the landlord once before (file number referred to on the cover page of this decision) and that application, heard on November 30, 2016, had been dismissed due to insufficient proof of service. The tenant stated that she used courtier service on the advice of her the law student formerly assisting her. The law student appearing with the tenant suggested the tenant may have misunderstood the instructions given to her. Approximately four minutes later, the landlord appeared at the hearing and confirmed that she had received the tenant's hearing package by way of a courier service.

Section 89(1) provides for the ways a monetary claim must be served upon the respondent. Below, I have reproduced section 89(1):

89 (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*].

[Reproduced as written]

The tenant had also submitted some documents as evidence; however, most of the documents before me were illegible because dark coloured pages were faxed to the Residential Tenancy Branch and images of text messages were too small to read.

I proceeded to explore service of the landlord's application and evidence. I heard that the landlord's application and evidence was served upon the tenant via registered mail. The tenant acknowledged receipt of the landlord's package. I noted that the landlord's evidence submission was very large and the pages were not numbered and there was no obvious organization such as an index for all of the documents and photographs. The landlord was asked whether her evidence package was in response to the tenant's claims, or in support of the landlord's claims, or both. The landlord indicated that her evidence contained both rebuttal evidence and evidence to support her claims against the tenant although there was no clear distinction in the package before me.

As for the evidence packages of both parties, I find that they failed to meet the requirements of Rule 3.7 of the Rules of Procedure. Rule 3.7 provides as follows:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

Documents must be legible copies, not photographs of printed material.

To ensure a fair, efficient and effective process, an identical package of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each respondent and submitted to the Residential Tenancy Branch directly or through a Service BC office.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

[Reproduced as written]

Given the tenant's failure to serve her application upon the landlord in a manner that complies with the Act, and the failure of both parties to provide evidence that was clear, legible and organized, I informed that parties that I was prepared to dismiss both applications with leave to reapply.

Residential Tenancy Policy Guideline 12: *Service provisions* provides policy statements and information with respect to service requirements. The policy guideline provides, in part:

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.

The landlord argued that both claims should be dismissed without leave to reapply. The landlord stated that she had spent a considerable amount of time preparing a response to the tenant's claims against her and that if the tenant's claim were dismissed without leave then she would be satisfied in not pursuing the tenant any further.

The law student assisting the tenant stated the tenant was unlawfully evicted and that she had suffered consequences as a result and requested that if I were to dismiss the tenant's application that she be given leave to reapply.

As for the previous hearing held on November 30, 2016 the landlord confirmed that she had not attended that hearing because she had not been served with notification of that hearing.

I have considered both parties' positions with respect to granting leave to reapply and I find that it would be in the interest of administrative fairness to dismiss both applications with leave to reapply, considering: the landlord acknowledged receiving the tenant's Application for Dispute Resolution even though it was not served in a manner that is recognized under section 89(1); both parties submitted evidence that did not meet the requirements of Rule 3.7; and, the landlord had been served with the tenant's previous application.

Before filing another Application for Dispute Resolution, both parties are strongly encouraged to familiarize themselves with the Act, including sections 59 and 89 as these sections pertain to filing and serving an Application for Dispute Resolution; as well as the Rules of Procedure; and, any applicable policy guidelines. Further, information with respect to the requirements of the Act and filing and serving an Application for Dispute Resolution may be obtained by contacting an Information Officer with the Residential Tenancy Branch and/or by accessing the Branch's website.

Conclusion

The tenant's application and the landlord's application are 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: June 06, 2017

Residential Tenancy Branch