



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PIKESTAFF CONTRACTING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for double the security deposit and pet damage deposit; and, compensation for other 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.

At the outset of the hearing, I confirmed service of hearing documents and evidence upon each other and the Residential Tenancy Branch. The tenants had named three respondents in filing their application but sent only one registered mail envelope to the landlord identified as a company on April 26, 2017. The tenants did not send a hearing package to the two individuals named as respondents. An applicant is required to serve each respondent with a hearing package and I amended the application to name only the entity that was served with the hearing package.

The landlord raised an issue with respect to service of the tenant's evidence package, which was received by the landlord on September 11, 2017. The tenants had not served any evidence at the time of serving the hearing package and did not mail the evidence to the landlord until September 6, 2017. The landlord submitted that the landlord's evidence was sent to the tenants on September 8, 2017, before receiving the tenant's evidence, as the landlord waited as long as possible to see if evidence was coming from the tenants. The tenants initially stated they could not recall the date the landlord's evidence was received. A search of the tracking number provided by the landlord showed that the landlord's evidence was delivered on September 11, 2017 to which the tenant responded that they were out of town until and did not receive it until September 13, 2017.

The Rules of Procedure provide that all available evidence is to be submitted and served when the Application for Dispute Resolution is served and if evidence is not available at that time the evidence is to be served as soon as reasonably possible, but no later than 14 clear days before the hearing. In calculating the number of days, the day of service and the day of the hearing are not counted. Accordingly, the tenants' evidence should have been received by the landlord no later than September 6, 2017. Mailing an evidence package to the landlord on September 6, 2017 is insufficient as there is no time afforded for mailing. As provided under section 90 of the Act, a recipient is deemed to receive mail five days after the date of mailing and it would appear that the tenants failed to take that into account.

The landlord submitted that the landlord was prejudiced by the late submission of the tenants and had not had the opportunity to fully review and prepare a response to the tenant's evidence which is over 100 pages.

I found the tenants failed to meet their burden to serve the landlord with their evidence in accordance with the Rules of Procedure. I informed the tenants that they were late in serving their evidence package to the landlord and the tenants were asked to provide a reason for the delay to which the tenant responded that moving, a change in career, and other personal circumstances lead to the delay.

Below, I have reproduced the relevant portions of the Rules, with my emphasis underlined, that were in effect at the time of filing and currently:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package 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].

3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible.

If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

Considering the tenancy ended in April 2017 at the latest and the tenants filed their Application in April 2017 I was of the view that much of the evidence was available at the time of filing. Personal circumstances may have created delays in submitting evidence as soon as possible; however, the tenants failed to meet the latest date for service which was September 6, 2017. I also accepted the landlord's position that the landlord was prejudiced by preparing a response to claims without having the benefit of seeing the evidence the tenants intended to rely upon as being reasonable in the circumstances.

In light of the above, I informed the parties that I would not admit the tenant's evidence package but that I would admit the landlord's evidence as it was served on time (a respondent's deadline for serving evidence is seven days before the hearing date). The tenants stated that they did not consider it feasible to proceed in the absence of their evidence package and requested their Application be withdrawn with liberty to reapply, noting that the personal circumstance for the delay in serving evidence was the death of a parent. The landlord requested that the matter proceed as scheduled as the outstanding dispute costs the landlord administratively.

Taking into consideration the personal circumstance described by the tenant, the death of a parent, **I grant the tenants' request to withdraw this application and I grant the tenants leave to reapply.**

The female tenant proceeded to hang up before I have finished concluding the hearing. I informed the parties that they remain at liberty to consider settling their dispute among themselves before the tenants reapply or before the next scheduled hearing date.

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: September 21, 2017

Residential Tenancy Branch