



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This decision is in respect of the landlords' application for dispute resolution made on June 24, 2018, under the *Residential Tenancy Act* (the "Act"). The landlords seek orders for compensation for the following:

1. costs related to, as stated in their application, "pet damage to window screens, loss of property (king bed duvet and comforter/pillows), cleaning costs (carpets, walls, windows/sills) garbage removal"; and,
2. recovery of the filing fee.

A dispute resolution hearing was convened at 1:30 p.m. on October 29, 2018, and one landlord and one tenant attended, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I confirmed the parties' legal names and have corrected the tenant's legal name on this decision.

At the commencement of the hearing the tenant remarked that while she received the Notice of Dispute Resolution Proceeding she did not receive any documentary evidence from the landlords.

In this decision, I have only reviewed and carefully considered the oral evidence pertaining to the preliminary issue of this application.

Preliminary Issue: Failure of Applicants to Serve Evidence on Respondents

The tenant testified that she received the Notice of Dispute Resolution Proceeding on June 25, 2018. However, she indicated that she had not received or been served any documentary evidence of, and from, the landlords. I inquired of the landlord whether the

landlords had served their evidence on the tenants, and he acknowledged that the documentary evidence had not been sent out.

Rule 3.14 of the *Rules of Procedure*, under the Act, states that

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.

While non-compliance with a rule under the *Rules of Procedure* will not in itself stop or nullify a proceeding, as stated in Rule 9.1, I do find that the principles of natural justice and procedural fairness require that the respondents have a full and fair opportunity to make a defense. They are only put in the position of being able to mount such a defense when they are in full possession of the facts and documentary evidence on which the applicants intend to rely during an arbitration hearing.

Taking into account the oral evidence of the parties and applying the Act, under which the *Rules of Procedure* have effect, I find that the failure of the applicants to comply with the *Rules of Procedure* is fatal to their application. As such, I dismiss the landlords' application in its entirety with leave to reapply.

Conclusion

I dismiss the landlords' application 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 Act.

Dated: October 29, 2018

Residential Tenancy Branch