



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on September 9, 2018. The tenant sought compensation

1. in the amount of \$590.00 for the return of his security and/or pet damage deposit, pursuant to section 33 of the Act,
2. in the amount of \$1,450.00 for, *inter alia*, stress, loss of peace of mind, and inconvenience, pursuant to section 67 of the Act, and,
3. in the amount of \$100.00 for the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened, and the landlord and tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties raised an issue regarding the service of evidence, which I shall address below.

Preliminary Issue: Tenant's Service of Documentary Evidence

Nearer to the end of the hearing, the landlord commented that she had not received any (documentary) evidence from the tenant. She explained that she was "very disappointed" and that it was not fair because she could not look at and consider the tenant's documentary evidence that ought to be in front of her.

The tenant testified that he served the Notice of Dispute Resolution Proceeding by way of registered mail shortly after the Residential Tenancy Branch accepted his application for dispute resolution but thought that his documentary evidence would somehow be

emailed to the landlord. He did not serve any of the documentary evidence upon which he relied to the landlord as required by the Act, *Rules of Procedure*, or policy.

Section 59(3) of the Act states that “except for an application referred to in subsection (6) [which is about a room in a residential hotel], a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.”

To provide greater clarity to this section, *Residential Tenancy Policy Guideline 27* (“Service Provisions”) states the following on page 3

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. 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.

Rule 3.1 of the *Rules of Procedure*, under the Act, reads as follows:

The applicant must, within three days 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:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) 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*].

Further, Rule 3.5 of the *Rules of Procedure* states that “At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.”

There are, as I explained to the parties during the hearing, a limited number of methods by which evidence may be served on the other party. Under section 89 of the Act, evidence may be served by physically leaving a copy of it with the other person (e.g., handing it over), by leaving a copy with an agent of the landlord, by sending a copy by registered mail, or as ordered by an arbitrator. Email is not one of the accepted methods by which evidence may be served, and the effectiveness of such is demonstrated in this case by the landlord not having received the tenant’s evidence pursuant to the Act, the *Rules of Procedure*, or with policy.

Given the failure by the tenant to serve the landlord in compliance with the Act and the *Rules of Procedure*, I dismiss the tenant’s application without leave to reapply.

Conclusion

I hereby dismiss the tenant’s application without leave to reapply.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 9, 2019

Residential Tenancy Branch