



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on September 24, 2018. The tenants sought compensation for the return of their security deposit, unpaid labour costs, costs related to a washer and dryer, and interest on the security deposit.

A dispute resolution hearing was convened on March 8, 2019 and one of the tenants ("J.G.") attended. The landlord did not attend.

Preliminary Issue: Service of the Notice of Dispute Resolution Proceeding

The tenant testified that she was unable to confirm when, how, or if, the Notice of Dispute Resolution Proceeding package (the "Notice") was served on the landlord. She said that she and her husband, the co-tenant, believed that the Residential Tenancy Branch would mail the Notice to the landlord. However, I explained that this was not the case. I further explained that without proof that the landlord was served a copy of the Notice I would be unable to hear the application.

Section 59 of the Act sets out the process for filing an application for dispute resolution and what the applicant must do. Section 59(3) requires that "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." This includes a copy of the Notice of Dispute Resolution Proceeding package.

This requirement is further described in the Residential Tenancy Branch's *Rules of Procedure*, Rule 3.1, which states the following:

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*].

And Rule 3.5 says that 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."

Given that I was not satisfied that the respondent/landlord was properly served under the Act and the *Rules of Procedure* I must dismiss the application with leave to reapply.

Non-compliance with the *Rules of Procedure* will not in itself stop or nullify a proceeding, but failure to serve a respondent goes to the heart of procedural fairness and natural justice. It is one of the fundamentals of procedural fairness that those affected by a quasi-judicial decision (such as that of an arbitrator) should receive (1) notice of the process about to be undertaken, (2) in a sufficient degree of detail, and (3) in a timely enough fashion to enable them to prepare to defend their interests.

Conclusion

I dismiss the tenants' application with leave to reapply.

I make no findings of fact or law about the issues of the application.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 8, 2019

Residential Tenancy Branch