



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP

Introduction

This hearing was scheduled to deal with the tenant's application for repair orders. The tenant and an Advocate appeared for the tenant, and the landlord was represented by the resident manager along with the building maintenance specialist.

At the outset of the hearing, I explored service of hearing documents and evidence.

The tenant filed his Application for Dispute Resolution on January 23, 2020 and the Residential Tenancy Branch prepared a proceeding package for the tenant to serve to the respondent on the same day.

The tenant testified that he served the proceeding package to the landlord via registered mail "a long time ago". The tenant did not know the date of mailing and did not present a registered mail receipt for the mailing of the proceeding package "a long time ago". The tenant's Advocate stated that the tenant's evidence package was sent to the landlord in March 2020 and that package was successfully delivered on March 6, 2020; however, the Advocate later acknowledged that he was not involved with this matter until after the registered mail was sent in March 2020. I was provided a registered mail receipt for a package sent on March 1, 2020 and delivered on March 6, 2020.

The landlord's building manager testified that he received the tenant's proceeding package from his superior only a couple of weeks ago and that an evidence package was not received from the tenant. I asked the building manager to describe the documents before him, which he did, and the documents he described are consistent with a proceeding package, not an evidence package.

The tenant then changed his testimony to state he sent the proceeding package via registered mail on March 1, 2020 and delivered his evidence package to the manager, in person, on March 11, 2020.

Under section 59 of the Act, an applicant is required to provide full particulars as to the nature of the dispute and serve the respondent with their Application for Dispute Resolution, along with other required documents as stipulated in Rule 2.5 and 3.1 of the Rules of Procedure, within three days of making their Application for Dispute Resolution. The acceptable methods of service are provided under section 89 of the Act and include personal service and registered mail.

Further, as provided in the Rules of Procedure, all available evidence should accompany the Application for Dispute Resolution but if the evidence is not available, it must be served as soon as possible but no less than 14 clear days before the hearing.

The above described requirements were developed in keeping with the principles of natural justice so as to ensure the respondent has adequate notice of the claims being made against them and sufficient opportunity to prepare and serve a response.

At the hearing, the applicant has a burden to prove the proceeding package and evidence was served in accordance with the requirements of the Act and Rules of Procedure.

In this case, I was provided with changing testimony and insufficient proof as to service of the proceeding package and evidence to the landlord in a manner that complies with the Act. Having heard from both parties, I find it likely that the proceeding package was sent and received in early March 2020 when it should have been served in person or mailed by January 26, 2020. Considering the date of this hearing, I find the delay in serving the landlord unreasonable and I find it would be prejudicial to proceed with this matter as scheduled.

I decline to consider an adjournment as I am of the view that the insufficient or delay in service is due to the tenant's actions, or lack thereof. However, I am prepared to dismiss this Application for Dispute Resolution with leave to reapply. As I stated to the parties during the hearing, I encourage the parties to try to resolve any outstanding repair issues between themselves but if a satisfactory outcome is not achieved, the tenant may make another Application for Dispute Resolution.

It should be noted that the tenant had a tendency to interrupt and speak out of turn during the hearing. The tenant is put on notice that there are certain expectations surrounding conduct at a hearing. Below, I have reproduced the applicable Rule for the tenant's future reference.

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Conclusion

The tenant's application is dismissed with leave to reapply.

Should the tenant reapply he must be prepared to demonstrate that he served his proceeding package and evidence upon the landlord in a manner that complies with the Act and the Rules of Procedure.

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: March 26, 2020

Residential Tenancy Branch