



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nanaimo Aboriginal Centre
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was scheduled to deal with a Tenant's Application for Dispute Resolution whereby the tenant applied for monetary compensation of \$6,938.45 from the landlord.

The tenant appeared for the hearing and two agents appeared on behalf of the landlord.

Preliminary and Procedural Matters

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

The tenant filed his Application for Dispute Resolution on November 7, 2019. The Application for Dispute Resolution was accompanied by a Monetary Order worksheet, but no evidence or supporting materials were submitted. The Residential Tenancy Branch prepared a proceeding package on November 14, 2019 for the tenant to serve upon the landlord. The tenant testified that he served the proceeding package to a staff person at the landlord's office, in person, on or about November 14, 2019. The package served upon the landlord's staff person on this date did not include any evidence or other supporting materials other than the proceeding package documents. The landlord's agents appearing at the hearing confirmed their staff person received the proceeding package from the tenant and forwarded it to them. I was satisfied the proceeding package was sufficiently served.

The landlord prepared a response in February 2020, including photographs and a receipt for disposal of property, based on the few statements the tenant made on his Application for Dispute Resolution and Monetary Order worksheet and submitted it to the Residential Tenancy Branch on February 10, 2020 and sent it to the tenant via

registered mail. The registered mail was successfully delivered to the tenant on February 20, 2020.

After receiving the landlord's response, on March 6, 2020, the tenant submitted evidence in support of his claim to the Service BC office (for delivery to the Residential Tenancy Branch), including 52 packages of documents and a USB stick containing several photographs and videos ("digital evidence"). Along with the USB stick was a "Digital Evidence Details" form. The Digital Evidence Details form includes information for participants serving digital evidence, including the following:

Important Information:

For your digital evidence to be considered at a hearing, it must meet requirements set out in the Residential Tenancy Branch Rules of Procedure:

- Digital evidence may include (but not limited to) photographs, audio recordings, video recordings or electronic versions of printable documents in an accepted format.
- You **must** provide a printed description of the digital device on this form.
- You must ensure all evidence submitted is served to the other party. Before the hearing, you **must** confirm that the other party can gain access to the files.

In the space provided on the form described above, the tenant placed a 'tick mark' beside the statement: "I will confirm before the hearing that the other party was able to see/hear the evidence on this digital device for at least seven full days."

The tenant's evidence package, including a USB stick, was delivered to the landlord's agent, in person, on March 10, 2020. The tenant testified that he did not make any attempt to confirm with the landlord's agent(s) that they could see or hear the content on the USB stick.

The landlord's agents submitted that they were disadvantaged in preparing their response since they had not received any materials from the tenant aside from the proceeding package documents and pointed out that the tenant's evidence was available long before he served them on March 10, 2020.

The tenant confirmed that the photographs and videos were taken in 2017, 2018 and up to the end of his tenancy which was September 2019. The tenant also confirmed that the specific amounts appearing on his Monetary Order worksheet dated November 6, 2019 were supported by evidence available to him at the time of preparing the Monetary Order worksheet. The tenant explained that a few pieces of evidence were available only more recently. Since the vast majority of the tenant's evidence was available to him at the time of filing, I asked the tenant why he did not serve that evidence with the

proceeding package shortly thereafter. The tenant responded that he met his 14 day time limit for serving evidence as he was informed by the Service BC clerk and in accordance with the Dispute Resolution Proceeding Fact Sheet.

I reviewed the applicable sections of the Rules of Procedure concerning service of evidence during the hearing, as described later in this decision, to which the tenant responded that he had to prepare the evidence package on his own, he has limited income to spend on printing and copying materials, he has a learning disability, and he did not want to wait to have his evidence package compiled before filing since there is a wait time for hearings.

The landlord's agent argued the tenant's application ought to be dismissed outright and if it is not it should proceed but without the admittance of the tenant's evidence package since the landlord was prejudiced by the tenant's delay in serving evidence.

The tenant was of the position the admittance of his evidence would be fair since he met his 14 day deadline for serving the landlord an evidence package and submitted that he has a "strong case" against the landlord that ought to be heard. The tenant also stated that if his evidence package would not be admitted he would request withdrawal of his application with leave to reapply.

Below, I provide my findings and reasons for deciding to dismiss the tenant's application with leave to reapply.

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 and available evidence as stipulated in Rule 2.5 and 3.1 of the Rules of Procedure, within three days of making their Application for Dispute Resolution.

Rules 2.5 and 3.1 provide that "to the extent possible" evidence should accompany the Application for Dispute Resolution but if the evidence is not available, Rule 3.11 provides that the evidence is to be served "as soon as possible" and if an Arbitrator finds the applicant "unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence." Rule 3.14, which is the Rule the tenant was relying upon, sets the outside time limit for serving evidence as being not less than 14 days before the hearing but it does not replace the requirements of Rules 2.5, 3.1 and 3.11.

The tenant indicated he relied upon the Dispute Resolution Fact sheet as setting out the deadline for serving his evidence. I note the Dispute Resolution Fact Sheet refers to the Rules of Procedure and provides an electronic link to the Rules of Procedure in the Fact Sheet. Nevertheless, the Fact Sheet does summarize the requirements of the Rules of Procedure as I have described above, including the requirement to provide evidence with the Application for Dispute Resolution and “as soon as possible”. The Fact Sheet, provides, in part:

Serving and submitting evidence

Whenever possible, an applicant must submit copies of all available documents, photographs, video or audio evidence to the RTB at the same time as the Application for Dispute Resolution (“see “Preparing evidence” below). The Rules require both the applicant and the respondent to serve their evidence on each other party and submit it to the RTB as soon as possible and, in any event, in accordance with the deadlines in the Rules:

- an applicant must serve and submit evidence as soon as possible so that it is received not less than 14 days before the hearing

Under 3.5 of the Rules of Procedure, the applicant has a burden to prove the proceeding package and evidence was served to the other party in accordance with the requirements of the Act and Rules of Procedure.

In addition to the above requirements, the Rules of Procedure provides special requirements where digital evidence is served to the other party, including Rule 3.10.5 which places an onus on the party relying upon digital evidence to:

“Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.”

Although the tenant made an affirmation that he would confirm with the landlord that the landlord could see/hear the evidence on the USB stick, the tenant never did make any attempt to obtain such confirmation.

The above described requirements of section 59 of the Act and the Rules of Procedure were developed in keeping with the principles of natural justice so as to ensure a fair hearing which includes sufficient and adequate notice to the respondent of the claims being made against them and sufficient opportunity to prepare and serve a meaningful and relevant response.

In this case, the a significant component of the tenant's evidence consisted of photographs and video taken during his tenancy. Also, much of the documentary evidence was support for the amounts claimed on the Monetary Order worksheet prepared on November 6, 2019. As such, I find the vast majority of the tenant's evidence was available to him when he filed his Application for Dispute Resolution. It appears to me the tenant eager to file his Application for Dispute Resolution to get in the queue for a hearing but was under the mistaken belief that he merely had to serve his evidence to the landlord 14 days before the hearing. However, such delays may be prejudicial especially where, as seen in this case, it resulted in the respondent trying to prepare a response and submit evidence based on very scant information and vague details contained in the tenant's Application for Dispute Resolution that did not provide any relevant dates, indication of requests for fumigation, or the basis for amounts indicated on the Monetary Order worksheet.

Neither party requested an adjournment so that the landlord may consider the tenant's evidence package and prepare a more meaningful and relevant response; however, I did not further consider such an option as I am of the view that the delay in service of the evidence upon the landlord is due to the tenant's actions, or lack thereof. While I appreciate compiling an evidence package takes time and some money for printing and copying, I find a four month delay to be unreasonable (calculated as November 6, 2019 being the date on the Monetary Order worksheet and Application for Dispute Resolution to March 6, 2020 the date the tenant delivered his evidence package to Service BC).

With respect to the landlord's request that the hearing proceed but without admittance of the tenant's evidence given the prejudice to the landlord, I accept that admittance of the tenant's evidence would be prejudicial to the landlord so I declined to admit the tenant's evidence. The tenant requested a withdrawal of the Application for Dispute Resolution with leave to reapply if his evidence was not admitted. The landlord requested dismissal without leave to reapply.

I have given consideration that the tenant indicated he has a strong case and that he has a learning disability in deciding to grant the tenant's request for withdrawal with the right to reapply. Therefore, the tenant's application is dismissed with leave to reapply.

Before reapplying, if the tenant choses to do so, the tenant is encouraged to familiarize himself with the Rules of Procedure. The Rules of Procedure are available on the Residential Tenancy Branch website and Information Officers may be reached by telephone (toll free) or by email for further information. The parties also remain at liberty

to settle their dispute between themselves and/or enlist the services of a legal professional or advocate.

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: April 01, 2020

Residential Tenancy Branch