



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, FFT

This hearing dealt with an Application for Dispute Resolution filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking:

- Repairs to the unit, site, or property;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants, who provided affirmed testimony. No one attended on behalf of the Landlord.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither Landlord nor an agent acting on their behalf attended the hearing, I inquired with the Tenants regarding service of the documents as explained below.

The Tenants stated that the Landlord was sent the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and the documentary evidence before me from the Tenants, by email on April 20th or 21st, 2020. No documentary evidence was provided from the Tenants showing that the documents were sent as described above, so I requested that the Tenants provide me with the email address used and details regarding the Landlord’s response, if any, to their email, as well as the history of email communication with the Landlord at this email address in relation to the tenancy.

The Tenants provided me the email address used, which has been documented on the style of cause page for this decision, and stated that it was provided to them by the Landlord in the fall of 2016 when the previous property manager left. The Tenants stated that the Landlord only ever corresponded with them by email once, in 2017, and that the Landlord did not respond to or acknowledge receipt of the email sent by them in relation to this hearing in April of 2020. The Tenants stated that they texted the Landlord to advise them that they had served them by email, and that the Landlord had responded to the text message without acknowledging receipt of the email, but a copy

of this text message was not submitted for my review or consideration. The Tenants stated that they served the Landlord by email as permitted by the Director and that the Landlord has a history of non-compliance with Residential Tenancy Branch (the "Branch") orders and the *Act*, and routinely avoids service. The Tenants stated that they have also filed a complaint against the Landlord with the compliance and enforcement division of the Branch in relation to administrative penalties for non-compliance with a previous repair order from the Branch.

Although the Director's Order dated March 30, 2020, permits service by email during the current state of emergency, it requires that the party serving the evidence satisfy the arbitrator that the party served either received and responded to the email or that the parties routinely used the email address at which the party was served to correspond in relation to tenancy matters. Given the testimony of the Tenants in the hearing, I am satisfied that the Landlord did not respond to their email and that no history of routine communication with the Landlord regarding tenancy matters by email exists. As a result, I find that I am not satisfied that the Landlord was either served or deemed served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and the documentary evidence before me from the Tenants, in accordance with the *Act* or the Director's Order dated March 30, 2020.

Further to this, I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlord was not served or deemed served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and the documentary evidence before me from the Tenants, I find that they did not have a fair opportunity to know the case against them or appear in their defense. As a result, the Tenants' Application seeking repairs to the rental unit, site, or property and a rent reduction for repairs, services, or facilities agreed upon but not provided, is dismissed with leave to reapply.

As the Tenants' Application was dismissed, I decline to grant recovery of the \$100.00 filing fee.

Conclusion

The Tenants claims for repairs to the rental unit, site, or property and a rent reduction for repairs, services, or facilities agreed upon but not provided are dismissed with leave to reapply. The Tenants' claim for recovery of the \$100.00 filing fee paid for this Application is dismissed without leave to reapply.

As the Tenants stated that the Landlord has failed to comply with a previous repair order from the Branch, the Landlord should be aware that any such repair order remains valid and in effect, unless a decision from the Branch or the BC Supreme Court has been rendered stating otherwise. The Landlord is cautioned that failing to comply with an order from the Branch may result in administrative penalties of up to \$5,000.00 per day, pursuant to sections 87.3 and 87.4 of the *Act*.

The Landlord should also be aware that section 32 of the *Act* requires them to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The Landlord cannot avoid or contract out of these, or any other obligations under the *Act* or regulations, pursuant to section 5 of the *Act*.

Further to this, the Landlord should be aware that the Tenants remain at liberty to seek financial compensation from the Landlord, by way of a one-time payment or ongoing rent reductions, or both, for any failure to comply with the *Act*, regulations, tenancy agreement, or Branch orders, or any loss, financial or otherwise, suffered as a result of the Landlord's non-compliance and that this financial compensation may be awarded in addition to any administrative penalties levied against the Landlord under the *Act*.

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: June 4, 2020

Residential Tenancy Branch