



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OLC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to sections 47, 67, 62 and 72 of the *Residential Tenancy Act*. The tenant applied to cancel a notice to end tenancy for cause, for a monetary order for loss under the *Act* and for the filing fee and for an order directing the landlord to comply with the *Act*.

Both parties attended this hearing along with their agents and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The landlord stated that the package he received from the tenant did not include a copy of the tenant's application and therefore he did not have information and codes required to upload evidence and join the conference call. The tenant agreed that she had not served the landlord with a notice of hearing. Two days before this hearing, the tenant called the landlord and informed him about the hearing but refused to provide him with a code to call in. The landlord testified that he contacted the Residential Tenancy Branch office and was given the call-in information. The landlord stated that he did not have sufficient time to upload and serve his evidence. The audit notes on the landlord's electronic file confirm that he contacted the Branch office.

Preliminary Matters

Section 59 (3) of the *Residential Tenancy Act* states 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. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

Rule 3 of the Residential Tenancy Branch Rules of Procedure addresses:

Serving the application and submitting and exchanging evidence

Rule 3.1: lists documents that must be served with the Notice of Dispute Resolution Proceeding Package. 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 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

The purpose of serving a notice of hearing and application for dispute resolution to the respondent is to notify the person being served of matters relating to arbitration and to provide the person with an opportunity for rebuttal.

In this case, I accept the landlord's testimony that he was not provided with a copy of the tenant's application which had the dispute access code and information on uploading evidence. I also accept that the landlord contacted the Branch office and was provided with a code to join the hearing by conference call.

Since the landlord was unable to upload evidence that he intended to rely on, conducting the hearing and using the tenant's evidence alone in the making of the decision, would prejudice the landlord and result in a breach of the principles of natural justice.

Conclusion

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

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: September 11, 2020

Residential Tenancy Branch