



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Zestazy Service Ltd. dba Zestazy
Accommodations and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

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

- Unpaid rent;
- Compensation for damage to the rental unit;
- Compensation for monetary loss or other money owed;
- Authorization to withhold all or a portion of the security deposit towards money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend.

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 the Tenant did not attend the hearing, I inquired with the Landlord regarding service of the documents as explained below.

The Landlord stated that they emailed their documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, to the Tenant at an email address regularly used during the tenancy to discuss tenancy matters, on July 24, 2020. The Landlord also stated that the Tenant responded and confirmed receipt of the email. However, no proof of this email or the Tenant's response was provided for my review or consideration.

Section 59 of the Act states the following with regards to the service of the Application on the Respondent:

Starting proceedings

- 59** (3) Except for an application referred to in subsection (6), 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.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package 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].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Although email is not regularly an approved method of service under sections 88 or 89 the Act, an order for substituted service was issued by the Director effective from March 30, 2020, to June 23, 2020, allowing for email service under particular conditions. However, this order was repealed on June 24, 2020, and was therefore no longer valid on and after June 24, 2020. As a result, I find that email was not an approved method of service at the time the Landlord testified that the documentary evidence and the Notice of Dispute Resolution Proceeding Package was emailed to the Tenant.

In the absence of documentary or other corroboratory evidence that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package were sent to and received by the Tenant by email as stated by the Landlord, on

July 24, 2020, I also do not find it reasonable or appropriate to consider the aforementioned documents sufficiently served for the purpose of the Act pursuant to section 72(2) of the Act. The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process and I am not satisfied on a balance of probabilities that the Tenant was served or deemed served with the Application, Notice of Hearing, or the evidence before me in accordance with sections 88 - 90 of the Act, sufficiently served for the purposes of the Act pursuant to section 72(2) of the Act, or served in accordance with the Director's Order for Substituted Service effective March 30, 2020 – June 23, 2020.

As a result, I find that the Tenant did not have a fair opportunity to know the case against them or appear in their defense at the hearing and that it would therefore be a breach of the Act, the Rules of Procedure, and the principles of natural justice to proceed with the hearing as scheduled. As a result, the Landlord's Application seeking unpaid rent, compensation for damage to the rental unit, compensation for monetary loss or other money owed, and authorization to withhold all or a portion of the security deposit is dismissed with leave to reapply. As the Landlord's Application was dismissed, I decline to grant recovery of the filing fee for the Application, and this portion of the Landlord's claim is therefore dismissed without leave to reapply.

Conclusion

The Landlord's Application, with the exception of recovery of the filing fee for the Application, is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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: October 21, 2020

Residential Tenancy Branch