



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1955 WESTERN APARTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 05, 2020 (the "Application"). The Tenant applied for an order that the Landlord comply with the act, regulation and/or the tenancy agreement.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. The Tenant provided affirmed testimony.

The Tenant said he was no longer seeking an order that the Landlord comply with the act, regulation and/or the tenancy agreement and is only seeking the filing fee. I told the Tenant the Application and Notice of Dispute Resolution Proceeding do not show that he is seeking the filing fee. The Tenant said he indicated on the online application that he was seeking the filing fee. I told the Tenant I would consider whether to allow him to seek the filing fee and I heard the Tenant on the filing fee issue.

Request for Filing Fee

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenant's evidence. The Tenant testified that three packages were served on the Landlord.

First, the hearing package and evidence were served on the building manager in person on October 05, 2020 and the Tenant saw the owner pick the package up.

Second, further evidence was served on the building manager in person on October 11, 2020.

Third, a letter was sent by regular mail to the Landlord November 23, 2020. The letter stated in part that the Tenant was seeking return of the \$100 filing fee.

I asked the Tenant if the request for the filing fee was included in anything else sent to the Landlord. The Tenant confirmed the November 23, 2020 letter was the only documentation sent to the Landlord about seeking the filing fee.

Section 59(2)(b) of the *Residential Tenancy Act* (the “Act”) states:

(2) An application for dispute resolution must...

(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings...

Rule 3.1 of the Rules of Procedure (the “Rules”) states as follows:

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 of 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;

c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) 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].

Rule 4.1 and 4.6 of the Rules state:

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter or remove claims made in the original application.

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act...and these Rules of Procedure...

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

Section 89 of the *Act* deals with service and states:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord...

Section 90 of the *Act* deals with deemed service and states:

90 A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed...

The Tenant is no longer seeking an order that the Landlord comply with the act, regulation and/or the tenancy agreement. The issue here is whether the Tenant should be permitted to seek the filing fee.

As stated to the Tenant at the hearing, the issue is whether the Landlord had sufficient notice that the Tenant was going to seek the filing fee at the hearing.

Pursuant to section 59(2)(b) of the *Act*, the request for the filing fee needed to be included in the Application. A request for the filing fee was not included in the Application or Notice of Dispute Resolution. Therefore, I am not satisfied the Landlord received notice of the request for the filing fee with the hearing package.

The Tenant would have received the Notice of Dispute Resolution which would have shown that a request for the filing fee was not included in the Application. If the Tenant wished to add this request, the Tenant needed to file an amendment pursuant to rule 4.1 of the Rules. The Tenant did not do so.

The Tenant pointed to the November 23, 2020 letter as notice of the request for the filing fee. I am satisfied based on the undisputed testimony of the Tenant that this letter was sent to the Landlord by regular mail on November 23, 2020.

However, accepting the November 23, 2020 as sufficient notice of the request for the filing fee is problematic for three reasons. First, the letter is not an amendment as required by rule 4.1 of the Rules. Second, the letter was not served in accordance with section 89 of the *Act* as required by rule 4.6 of the Rules as regular mail is not a form of service permitted under section 89(1) of the *Act*. Third, the letter was not served on the Landlord "not less than 14 days before the hearing" as required by rule 4.6 of the Rules as, pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the letter November 28, 2020, only nine days before the hearing.

In the circumstances, I am not satisfied the Tenant complied with the *Act* or Rules in relation to a request for reimbursement for the filing fee. I understand that the Tenant

says he indicated he was seeking reimbursement for the filing fee on the online application. However, this is not reflected in the Application or Notice of Dispute Resolution. I find this to be the issue because the Notice of Dispute Resolution was what gave the Landlord notice of what the Tenant would seek at the hearing.

Given the above, I am not satisfied the Landlord received sufficient notice that the Tenant would seek reimbursement for the filing fee at the hearing. I find this particularly important here because the parties resolved the issue raised in the Application such that the Tenant is no longer seeking an order that the Landlord comply with the act, regulation and/or the tenancy agreement. Therefore, it may be that the Landlord did not attend the hearing because the only issue raised in the Application had been resolved.

In these circumstances, where the Notice of Dispute Resolution did not show a request for reimbursement for the filing fee, an amendment was not filed or served on the Landlord, the parties resolved the one issue noted on the Notice of Dispute Resolution and the Landlord did not appear at the hearing, I am not satisfied it is appropriate to amend the Application to allow the Tenant to seek reimbursement for the filing fee. I am not satisfied the Landlord had sufficient notice that this issue would be dealt with at the hearing and therefore find it would be unfair to the Landlord to decide this issue.

Conclusion

The Tenant no longer sought an order that the Landlord comply with the act, regulation and/or the tenancy agreement and therefore I consider this request to be withdrawn.

I decline to allow the Tenant to amend the Application to request the filing fee and therefore have not considered whether the Tenant is entitled to the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 08, 2020