



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-PP, MNRL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act"), for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The two landlords and their agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The two landlords confirmed that they were the owners of the rental unit and that their agent had permission to speak on their behalf. The landlords' agent confirmed that he was the property manager for the rental unit.

At the outset of the hearing, I informed the two landlords and their agent that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). During the hearing, the two landlords and their agent all affirmed under oath that they were not recording the hearing.

The landlords and their agent did not make any adjournment or accommodation requests at this hearing.

At the outset of the hearing, the landlords' agent confirmed that an order of possession was not required because the landlords already obtained one at a previous RTB hearing, by way of a settlement. Accordingly, this portion of the landlords' application is dismissed without leave to reapply. The landlords' agent said that the landlords were only pursuing a monetary order against the tenant at this hearing.

Preliminary Issue – Service of Landlords' Application

The landlords' agent stated that the tenant was served with the landlords' file number on February 4, 2021, prior to the notice of hearing and application being issued on February 8, 2021.

The landlords' agent testified that the tenant was served with the landlords' application for dispute resolution hearing package on March 25, 2021, by leaving a copy on the tenant's doorstep and on April 9, 2021, in person.

When I questioned the landlords' agent as to why the landlords' notice of hearing and application were not served to the tenant within 3 days of the application package being issued on February 8, 2021, he said that it was an "oversight" and an "administrative error" on his part.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

89 (1) An application for dispute resolution ..., 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;*

*(d) **if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;***

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Rule 3.1 of the RTB *Rules* states the following, in part (my emphasis added):

3.1 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 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].*

The above information regarding service of the landlords' application package within 3 days of being provided by the RTB, is contained on page 1 of 6 on the RTB-114 "Residential Tenancies Fact Sheet: The Dispute Resolution Process." This document was provided by the landlords with their application evidence for this hearing.

Accordingly, I find that the landlords did not serve the tenant with the landlords' application and notice of hearing, in a timely manner, as required by section 89 of the *Act* and Rule 3.1 of the *RTB Rules*.

Leaving a copy of the landlords' application on the tenant's doorstep on March 25, 2021, is not permitted by section 89 of the *Act*. Personal service of the landlords' application on April 9, 2021, is permitted by section 89 of the *Act*. However, I find that the tenant did not have sufficient or timely notice of this hearing in order to respond to the landlords' application or evidence, having been personally served on April 9, 2021, only weeks before this hearing on April 30, 2021.

The landlords had ample time from receiving their application and notice of hearing on February 8, 2021, to serve it in a timely manner, prior to this hearing date of April 30, 2021. The tenant did not attend this hearing to confirm service.

I notified the landlords and their agent that the landlords' application was dismissed with leave to reapply, except for the order of possession and the filing fee. I informed them that the landlords could file a new application and pay a new filing fee, if the landlords wished to pursue this matter further. The landlords' agent confirmed his understanding of same.

I notified the landlords and their agent that I could not provide legal advice to them, so they could hire a lawyer to obtain same, if they wished to do so. I informed them that I could not hear an application for substituted service, when they had not made one or provided evidence for same, prior to or at this hearing. I informed them that they could file a future application for same, if they wished to do so. I notified them that I did not know when they could obtain a future hearing date, as this was based on separate administrative scheduling. The landlords' agent confirmed his understanding of same.

Conclusion

The landlords' application for an order of possession and to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlords' application for a monetary order for unpaid rent and to retain the tenant's security deposit 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: April 30, 2021

Residential Tenancy Branch