



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, MNDCT, RP, RR, PSF

Introduction and preliminary matters

On February 22, 2021, the Tenant made an Application for Dispute Resolution seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking a provision of services or facilities pursuant to Section 62 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail, but she was unsure of the date this was done. However, she stated that this was done on or around the date that the package was ready. Records indicate that this Notice of Hearing package was provided to the Tenant on March 5, 2021.

The Landlord advised that he did not receive this package until April 16, 2021 and he referenced a picture of the registered mail package, submitted as documentary evidence (the registered mail tracking number is noted on the first page of this Decision). The Landlord stated that this package was served late and was not in compliance with the timeframe requirements of the Rules of Procedure. In addition, he submitted that receiving this package so late prevented him from acquiring relevant police reports necessary to respond to the Tenant's claims.

When the Tenant was again asked about service of the Notice of Hearing package, she then provided an alternate account by stating that she served the Landlord this package by email on February 23, 2021. She was advised that this would not have been possible as this package was not even made available to her until March 5, 2021; however, she insisted that this package was created for her at the government office. When she was asked why she elected to serve documents by email, she stated that she has sent the Landlord emails before. She also indicated that she had previous Dispute Resolution proceedings with this Landlord.

She then provided contradictory testimony and advised that she served this package by registered mail within the required timeframe and she retrieved her registered mail receipt. The registered mail tracking number was the same one provided by the Landlord which confirmed that she served this package to the Landlord on April 13, 2021.

The Tenant was asked to explain these inconsistent and contradictory submissions with respect to service of the Notice of Hearing package and she insisted that the government office provided her with the Notice of Hearing package for service on February 23, 2021. She testified that she contacted staff with the Residential Tenancy Branch, and she submitted that the Information Officer corroborated her position with respect to appropriate service dates and methods of service.

I find it important to note that records indicate that the Tenant contacted the Residential Tenancy Branch on April 12, 2021 and spoke with an Information Officer. The Tenant was advised that the Notice of Hearing package was processed on March 5, 2021 with instructions to serve by March 8, 2021. As well, the notes indicate that the Tenant found the email while on the phone with the Information Officer and she stated that she did not realize that this was the Notice of Hearing email. The Tenant was cautioned that serving the Notice of Hearing package would be considered late and it would be up to the Arbitrator to determine if this was acceptable or not. The Tenant was also provided with information about withdrawing her Application.

When reviewing the Tenant's contradictory and inconsistent statements about service, it is clear to me that the Tenant was being deceptive initially and then she attempted to change her account unsuccessfully. The Tenant then attempted to lay blame on the government office and an Information Officer about the manner and date for which the Notice of Hearing package was served. Given that the Tenant admitted to filing previous Dispute Resolution Applications recently, I can reasonably infer that she would have been familiar with the process of how and when to serve the Notice of Hearing package. It is not clear to me why the Tenant provided contradictory testimony of service or why she attempted to cast the responsibility of her failure to serve the Notice of Hearing package appropriately on another body. I find that these dubious and inconsistent statements made by the Tenant cause me to question her credibility on the whole.

Regardless, the undisputed evidence is that this Notice of Hearing package was served to the Landlord on April 13, 2021, well after the three-day timeframe as required by Rule 3.1 of the Rules of Procedure. While this does not necessarily result in a dismissal of the Application, the Landlord advised that this delay prevented him from acquiring police reports which would have formed a part of his response to the Tenant's claims. Given that acquiring these reports can often take a considerable amount of time, I am satisfied that this delay in service of the Notice of Hearing package resulted in a prejudice to the Landlord. Whether or not late service of this Notice of Hearing package was intentionally done to prejudice the Landlord is not clear. In any event, I find that the Tenant did not comply with the Rules of Procedure by serving the Landlord the Notice of Hearing package within three days of March 5, 2021. Ultimately, I dismiss this Application with leave to reapply.

Conclusion

I dismiss the Application for Dispute Resolution with leave to reapply; however, this does not extend any applicable time limits under the legislation. I have not made any findings of fact or law with respect to the Application.

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 1, 2021

Residential Tenancy Branch