



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 689352 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit, pursuant to section 38;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:56 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. The tenant and advocate CJ attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, her advocate and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

The tenant submitted this dispute resolution application on December 31, 2020. The Notice of Dispute Resolution Proceeding (the application) is dated February 01, 2021. The respondent is an incorporated company.

The tenant affirmed she served the application by registered mail on February 02, 2021. The tenant addressed the package to the landlord's representative MB and the landlord. Later the tenant stated she is not sure if she addressed the package to the incorporated company and MB and that it is possible she addressed the package only to MB.

The tenant testified she obtained the landlord's address (mentioned on the cover page of this decision) in the title search document submitted into evidence. The title search document indicates the parcel identifier and legal description of a property.

Section 89(1) of the Act states:

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;
- (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];
- (f) by any other means of service provided for in the regulations.

Rules of Procedure 3.1 and 3.5 state:

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].

[...]

3.5. Proof of service required at the dispute resolution hearing

At the hearing, **the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent** was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

(emphasis added)

Based on the tenant's testimony, I find, on a balance of probabilities, that the tenant did not serve the application to the landlord in accordance with section 89 of the Act, as the

tenant may have addressed the application package to MB instead of the incorporated company landlord.

Furthermore, the title search document submitted into evidence indicates the parcel identifier and the legal description of a property, but it does not indicate if the property is the rental unit.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I dismiss the tenant's application for a monetary order with leave to reapply. Leave to reapply is not an extension of the timeline to apply.

I dismiss the tenant's application for an authorization to recover the filing fee without 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: July 12, 2021

Residential Tenancy Branch