



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL MNDCL FFL

Introduction

This hearing was convened to address the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary claim of \$16,673.00 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, plus the filing fee.

The landlords and an agent for the landlord, SB (agent) attended the teleconference hearing and were affirmed. The tenant did not attend the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated March 16, 2021 (Notice of Hearing) and application were considered and will be described below.

Preliminary and Procedural Matters

The landlords and agent were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The landlords and agent were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlords and agent were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlords and agent did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlords confirmed the respective email addresses for both parties at the outset of the hearing and were advised that the decision would be emailed to them.

Regarding service, the landlord testified that the Notice of Hearing and application were served personally on the tenant on December 4, 2020. The landlords were provided 5 minutes to confirm the service date before we could proceed, and the landlords again affirmed the tenant was served personally on December 4, 2020. At this point in the hearing, the landlords were advised that I was not satisfied on service as the Notice of Hearing was not issued until March 2021, so service on December 4, 2020 would be impossible as the document had not yet been created. The landlords then provided a new date of March 4, 2021 to which the landlords were advised that March 4, 2021 could not be possible as the document was created and dated on March 16, 2021 and that based on the contradictory testimony I would be dismissing their application as I was not satisfied that the tenant was sufficiently served with the Notice of Hearing and application.

RTB Rule 3.5 applies and states:

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]

Both parties have the right to a fair hearing. The tenant would not be aware of the hearing without having received the Notice of a Dispute Resolution Hearing and application. Therefore, **I dismiss** the landlords' application **with leave to reapply** as I am not satisfied that the tenant has been sufficiently served with the Notice of Hearing and application based on the contradictory testimony of the landlords and RTB Rule 3.5. I note this decision does not extend any applicable time limits under the Act.

In addition to the above, once the landlords were advised of my oral decision, they attempted to give me another date, this time March 16, 2021. The landlords were advised that they were provided with ample opportunity to be organized and provide the date of service for the Notice of Hearing and application and that I would not be accepting a fourth attempt for the correct date. Also, the landlords were advised that while I had the discretion to either dismiss their application with or without leave to reapply, in the interests of fairness, I would dismiss with leave to reapply due to a service issue.

I do not grant the filing fee due to the service issue.

Conclusion

The landlords' application is dismissed with leave to reapply due to a service issue.

The filing fee is not granted due to the service issue.

I encourage the landlords to be prepared with all service documents and to complete a Proof of Service document when serving documents to assist the parties recall when documents are served. All forms related to the dispute resolution process can be found at: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms>.

This decision does not extend any applicable time limits under the Act.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2021

Residential Tenancy Branch