



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”) for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

Three individuals for the Landlord (the “Landlord”) and one of the Tenant’s attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord testified that they had been served with the Tenant’s documentary evidence package. The Tenant testified that they had not been served with the Landlord’s documentary evidence. The Landlord was asked to provide testimony on how their documentary evidence package was served to the Tenants; the parties attending on behalf of the Landlord were unable to provide testimony or evidence of the Landlord’s service of the evidence package to the Tenant. As the Landlord was unable to show service of their documentary evidence package to the Tenant, I will not consider the Landlord’s evidence package in my decision.

At the outset of these proceedings, the Tenant testified that they had not been served with the Dispute Resolution and Notice of Hearing documents for the Landlord’s application in accordance with section 59(3) of the Act and the Residential Tenancy Branch Rules of Procedure.

Section 59(3) of the *Act* and the Residential Tenancy Branch Rules of Procedure states that each respondent **must** be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

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].”

I have reviewed the Notice of Hearing document created for these proceedings, noting that this document was created and provided to the Landlord on March 31, 2021.

Both the Landlord and the Tenant agreed that the Application for Dispute Resolution and Notice of Hearing documents were served to the Tenants on April 8, 2021, 8 days after the document was created.

When asked, the Landlord testified that they did not know why the documents were served late. I find that the Landlord’s explanation for the delayed service of the Notice of Hearing documents to be insufficient grounds to extend the service requirements for this document. Consequently, I find that the Tenants have not been duly served the notification of this hearing documents as required, pursuant to section 59 of the *Act*.

Consequently, I dismiss the Landlord’s application.

Conclusion

I dismiss the Application for Dispute Resolution.

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: August 27, 2021

Residential Tenancy Branch