



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, LAT, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- disputation of a rent increase, pursuant to sections 42 and 43;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Preliminary Issue- Service

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure 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].

[Emphasis added]

The Residential Tenancy Dispute Management System states that the Notice of Dispute Resolution Proceeding was emailed to the tenant on July 9, 2021. I confirmed with the tenant that the email address the Notice of Dispute Resolution Proceeding was emailed to is the tenant's correct email address. The tenant testified that she had computer problems and did not receive the Notice of Dispute Resolution Proceeding until September 24, 2021 when she called in to the Residential Tenancy Branch and requested a copy.

The tenant testified that she served the landlord with the Notice of Dispute Resolution Proceeding via registered mail on September 24, 2021. The landlord confirmed receipt. The tenant provided the Canada Post tracking number in the hearing which is located on the cover page of this decision. The Canada Post website states that the above packaged was delivered on October 3, 2021, 11 clear days before this hearing.

I find that the Residential Tenancy Branch made the Notice of Dispute Resolution Proceeding Package available on July 9, 2021. I find that the tenant failed to serve the landlord with this application for dispute resolution within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch contrary to Rule 3.1. I find that the landlord's ability to respond to the tenants' claim is prejudiced by the late service. Pursuant to my above findings, I dismiss the tenant's claim 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: October 15, 2021

Residential Tenancy Branch