



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOCIETY OF SAINT VINCENT DE PAUL OF VANCOUVER
ISLAND and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On June 22, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) requesting a monetary order for unpaid rent, permission to retain the security deposit, and the return of the filing fee. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”) attended the conference call hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

Section 71 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the 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].”

The Landlord testified that the Application for Dispute Resolution and Notice of Hearing were served on the Tenant by mail within the required three days but that they did not have proof that service, nor could offer testimony as to the day the Notice of Hearing was mailed to the Tenant.

The Landlord testified that the Application for Dispute Resolution and Notice of Hearing were served again several days later, and that a copy of that mailing was in evidence. The Landlord was asked to testify as to the date this second mailing occurred, the Landlord was unable to speak to the date of this service, even after being given additional time to reference their documents. The Landlord reference the documents that had been submitted into documentary evidence, encouraging this Arbitrator to go look up the requested information themselves. The Landlord was reminded that this is a participatory hearing, not an administrative process and that as the applicant they are required to present all evidence and be able to speak to that evidence during the proceedings. The Landlord remained unable to speak to the details of their own evidence.

I find that the Landlord has failed to prove to my satisfaction that the Tenant was served the Application for Dispute Resolution and Notice of Hearing documents in accordance with the Residential Tenancy Branch rules of procedure. I find that the Tenant had not been duly served in accordance with the Act. Therefore, I will not proceed in this hearing.

The Landlord was offered an adjournment in order to serve in accordance with the Act. The Landlord declined the offered adjournment. Therefore, I dismiss the Landlord's application without leave to reapply.

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: November 8, 2021

Residential Tenancy Branch