



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL, MNRL, MNDL, MNDCL, OPN, OPL-4M

Introduction

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

- an Order of Possession for landlord's use of property, pursuant to section 49;
- an Order of Possession for Demolition, Renovation, Repair or Conversion of a Rental Unit, pursuant to section 49;
- an Order of Possession pursuant to the tenant's notice to end tenancy and section 45;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the respondent, 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 address for service of this decision.

The applicant testified that the respondent was served with this application for dispute resolution within one week of July 12, 2021 via e-mail and regular mail. The applicant testified that the respondent was served with her evidence via express or certified mail

within three days of giving it to Service B.C. The applicant testified that she could not recall the exact dates of service. No proof of service documents were entered into evidence. In the hearing, the applicant was not able to provide me with any tracking numbers for any of the above mailings.

The respondent testified that he was not served with the applicant's application for dispute resolution or evidence and only learned of today's hearing because the Residential Tenancy Branch sent him a reminder e-mail.

Both parties agree that they do not have a written agreement to serve each other via email.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

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].

Rule 3.5 of the Rules states:

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.

Section 89(1) of the *Act* states that 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*].

I find that the applicant did not serve the respondent with her application for dispute resolution in a manner required under section 89 of the *Act* because regular mail is not an authorized method of service and the parties do not have an email service agreement. I find that the applicant has also not proved that the applicant's application for dispute resolution was served on the respondent via email or regular mail because no proof of service documents or serving emails were entered into evidence and the respondent testified that they were not received. I dismiss the landlord's application for dispute resolution with leave to reapply for failure to prove service and failure to serve in accordance with section 89 of the *Act*.

I notified the applicant that if she wished to pursue this matter further, she would have to file a new application. I cautioned the applicant to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

In the hearing the respondent testified that he is not a tenant but an owner of the subject rental property; this was disputed by the applicant. Both parties agree that the applicant is the respondent's mother. I advised both parties that in any future hearing they would be required to provide evidence on whether or not a tenancy exists between the parties. I notified both parties that they could consult a lawyer for legal advice or an information officer at the Residential Tenancy Branch for information regarding the *Act* or the hearing process.

I find that since the applicant's application was dismissed, the applicant is not entitled to recover the \$100.00 filing fee from the respondent, pursuant to section 72 of the *Act*.

Conclusion

I dismiss the applicant's application to recover the \$100.00 filing fee without leave to reapply.

The remainder of the applicant's application is dismissed 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: November 15, 2021

Residential Tenancy Branch