



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jackwell Investments Ltd. c/o Hunter
McLeod and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both of the tenants attended the hearing, and the landlord was represented at the hearing by property manager, DD ("landlord"). As all parties were present, service of documents was examined.

Preliminary Issue – Service of Notice of Dispute Resolution Proceedings

The landlord testified that he served each of the tenants with his evidence package by sending it via registered mail on January 14, 2022. The landlord testified that a copy of the Notice of Dispute Resolution Proceedings was included when serving the evidence. One of the tenants, VM, acknowledges receiving the landlord's evidence package in mid-January.

The other tenant, OP denies receiving the landlord's Notice of Dispute Resolution Proceedings package. She testified that she and the co-tenant no longer reside in the same residence and that she provided the former landlord with her new address some time ago via email. OP also testified that she electronically uploaded evidence to the Residential Tenancy Branch's dispute management system although that evidence was not before me for this hearing.

The landlord testified that he believes he sent each of the tenants the Notice of Dispute Resolution Proceedings package some time in July of 2021, without evidence, by registered mail right after he received the notice from the Residential Tenancy Branch. The landlord was unable to provide a date of mailing or tracking numbers from Canada Post.

Analysis

The Residential Tenancy Branch Rules of Procedure states:

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].

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.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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];

(f)by any other means of service provided for in the regulations.

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. (Excerpt reprinted below)

PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report. Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The principles of natural justice and procedural fairness require that each of the tenant/respondents have been put on sufficient notice of the claim against them and that they have had adequate time and opportunity to respond to the application. Based on the landlord's lack of evidence regarding service, I am not satisfied that each respondent/tenant was properly served with the documents within 3 days, as set out in Rule 3.1 of the Residential Tenancy Branch Rules of Procedure. As such, I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*.

I caution the tenant OP to provide her current address to the landlord by any of the methods provided for in section 88 of the *Act* so that the landlord can effectively serve her with a Notice of Dispute Resolution Proceedings.

Conclusion

The landlord's application for dispute resolution 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: January 28, 2022