



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

The Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) for an order that the Landlord make repairs for health or safety reasons. They also applied for reimbursement of the Application filing fee. This is an expedited hearing. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on January 20, 2022. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions. Both parties attended the conference call hearing at the scheduled date and time.

Preliminary Issue – service of the Notice of Dispute Resolution

The Landlord advised they did not receive a copy of the Notice of Dispute Resolution (the “Notice”) from the Tenants; rather, they received a reminder email on January 15, 2022. The Landlord also confirmed they received no evidence prepared by the Tenants for this hearing.

The Tenants confirmed they did not provide the Notice to the Landlord. Their stated reason was that they did not receive the Notice from the Residential Tenancy Branch after they applied. They received a phone call; however, they never received an email with the Notice, then later received the Notice on January 7, 2022. The Tenants stated they did not provide evidence to the Landlord in advance for this same reason.

The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution. Subsection (3) states: “. . . a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.”

Additionally, the *Residential Tenancy Branch Rules of Procedure* that are crafted to ensure a fair process specify the documents to be served by the applicant (here, the Tenants) to the respondent (here, the Landlord). These are: the Notice of Dispute Resolution Proceeding provided when applying; the Respondent Instructions for Dispute Resolution; a process fact sheet; and other evidence submitted by the applicant. Rule 10.3 specifies that for an expedited hearing, an applicant must serve the listed document within one day.

The *Act* s. 89 gives the rules for service of the application for dispute resolution.

The Tenants did not provide a copy of the Notice – that document that is generated when a person applies for dispute resolution – to the Landlord, either through mail or in person. Records at the Residential Tenancy Branch verify that the Branch sent the Notice to the Tenants electronically on December 29, 2021, at 9:06am. This included 6 attachments to that email. I verified the Tenants' email in the hearing, and that is the email address that appears on the record. The message explicitly states the Tenants must serve the packages to the Landlord no later than December 30, 2021.

I find the Landlord did not have required information for their attendance in this hearing. Additionally, non-disclosure of the Tenants' evidence is a prejudice to the Landlord should the hearing proceed without the opportunity for them to review that information and respond.

Conclusion

I dismiss the Tenants' Application for emergency repairs, with leave to reapply. This decision does not impact any deadlines as set forth in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 20, 2022

Residential Tenancy Branch