



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, FFT

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on November 1, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- To dispute a rent increase;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant A.K., the Tenant's support person S.L. the Landlords, and the agent for the Landlord E.D. All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Section 59 (3) of the Act and rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent(s) must be served with various documents, including the Notice of Dispute Resolution Proceeding, which includes the Application and the Notice of Hearing, within 3 (three) days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant(s) by the Residential Tenancy Branch (the Branch). Branch records indicate that the Notice of Dispute Resolution Proceeding Package was sent to the Tenants by email, as per their request on the Application, on November 3, 2021, for service on the Landlord by November 6, 2021.

The parties confirmed that the Notice of Dispute Resolution Proceeding Package was not given to the Landlord by the Tenants until January 21, 2022, only three days before the hearing. At the hearing the Tenant A.K. stated that they thought they had sent the Landlord a copy earlier, but must not have, as the Landlord recently requested it and was given a copy by them on January 21, 2021. The Landlords stated that although the

Tenant had previously given them a photocopied version of the paper Application, they were not served any documentation regarding the hearing itself until January 21, 2022.

The Landlords argued that the hearing should not proceed, and the Application should be dismissed as they were not served in time, and therefore did not have a full opportunity to prepare. The Tenant argued that the hearing should proceed as the Landlords were able to attend and were able to submit some documentation to the Branch on January 15, 2022, January 16, 2022, and January 21, 2022, which is prior to the hearing.

Although I acknowledge that the Landlords were able to submit some documentary evidence for my review at least 7 (seven) days prior to the hearing, I am not satisfied that this is the entirety of their evidence or that further documentary evidence would not have been served and submitted, had they been properly served with the Notice of Dispute Resolution Proceeding Package as required by the *Act* and the Rules of Procedure. Further to this, I note that several documents were submitted late by the Landlords after receiving the Notice of Dispute Resolution Proceeding Package from the Tenants on January 21, 2022, and that the Landlords stated at the hearing that they were not prepared to proceed as they had not been given enough notice of the hearing by the Tenants. Finally, Branch records indicate that the Landlord called the Branch on January 13, 2022, as they had received an auto-generated email regarding evidence submission deadlines for this Application, and did not know why, as they were not aware of the hearing date. Branch records indicate that a courtesy copy of the Notice of Dispute Resolution Proceeding Package was emailed to them by the Branch on January 13, 2022, and I am satisfied that the Landlord was therefore able to submit documentary evidence for the hearing prior to service of the Notice of Dispute Resolution Proceeding Package on them by the Tenants on January 21, 2022.

I find that receiving a courtesy copy of the Notice of Dispute Resolution Proceeding Package from the Branch as a result of an inquiry related to an auto-generated Branch email regarding the Application, is not the same as receiving a copy of the Notice of Dispute Resolution Proceeding Package from the Tenants in compliance with the *Act* and the Rules of Procedure. While the Branch provides this service as a courtesy, when requested by a respondent, I find that it in no way alters or diminishes the requirements of applicant(s) in relation to service of these documents on respondents. In any event, I find that the courtesy copy was received by the Landlords well past the service deadlines set out in the *Act* and the Rules of Procedure.

The opportunity to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. I find that the Landlords did not have sufficient opportunity to either make themselves aware of the case against them, or to prepare for the hearing, as the Tenants did not serve the Landlord with the Notice of Dispute Resolution Proceeding Package, which includes the Notice of Hearing, until January 21, 2022, only three days before the hearing. As a result, I find that it would be a breach of the *Act*, the Rules of Procedure, and the principles of administrative fairness to proceed with the hearing, and I therefore dismiss the Tenants' Application seeking to dispute a rent increase and receive compensation for monetary loss or other money owed, with leave to reapply. As the Tenants' Application was dismissed, I decline to grant the Tenants recovery of the filing fee and I dismiss that portion of their Application without leave to reapply.

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

Dated: January 24, 2022

Residential Tenancy Branch