



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord, the landlord's son/agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's translator also attended and affirmed to translate from the English language to the Spanish language and from the Spanish language to the English language, to the best of her ability.

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

The agent testified that the tenant was served with the Notice of Dispute Resolution Proceeding Package via registered mail on December 29, 2021. The agent provided the registered mail tracking number in this hearing, which is located on the cover page of this decision. The Canada Post website states that the above package was delivered on January 5, 2022. The tenant testified that he received the above package around that time.

The Notice of Dispute Resolution Proceeding Package was made available to the landlord for service on the tenant on October 4, 2021. The agent testified that the landlord did not receive the Notice of Dispute Resolution Proceeding Package on October 4, 2021 and informed the Residential Tenancy Branch (RTB) of same in December of 2021 and the RTB sent them a new package.

The RTB records show that the Notice of Dispute Resolution Proceeding Package was sent to the landlord's email address on October 4, 2021 and again on December 22, 2021, at the request of the landlord.

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].

I find that the landlord did not serve the tenant with the Notice of Dispute Resolution Proceeding Package within three days of the Notice of Dispute Resolution Proceeding Package being made available to the landlord on October 4, 2021. Based on the RTB records, the Notice of Dispute Resolution Proceeding Package was sent to the correct e-mail address on October 4, 2021. It was the landlord's responsibility to check his email and junk mail for the Notice of Dispute Resolution Proceeding Package.

The tenant testified that he did not have enough time to review and respond to the landlord's claim due to the late service. I find that the late service prejudiced the tenant's ability to prepare and respond to the landlord's claim. The landlord's application is therefore dismissed, with leave to reapply, for failure to serve the tenant in accordance with the timelines set out in the *Rules*. In the hearing I cautioned the landlord, that in any future arbitration, the landlord must serve the tenant in accordance with section 89 of the *Act* and rule 3.1 of the *Rules*.

The agent testified that the tenant was not served with the landlord's evidence.

Section 3.14 of the *Rules* states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that had this hearing proceeded, the landlord's evidence would have been inadmissible for failure to serve the tenant in accordance with *Rule 3.14*. In the hearing I cautioned the landlord, that in any future arbitration, the landlord would have to serve their evidence on the tenant in accordance with section 88 of the *Act* and rule 3.14 of the *Rules*.

Conclusion

The landlord's applications for a Monetary Order for damage, and authorization to retain the tenant's security deposit, are dismissed with leave to reapply.

The landlord's application for recovery of the filing fee is dismissed without leave to reapply, pursuant to section 72 of the *Act*.

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: February 25, 2022

Residential Tenancy Branch