



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RPP MNDCT**

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- an order for the Landlord to return the Tenant's personal property pursuant to section 65; and
- a monetary order for compensation pursuant to section 67.

The two Landlords ("SP" and "KP"), the Tenant and the Tenant's advocate ("DW") attended this hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding by Tenant

When I asked, the Tenant admitted that she had not served the Notice of Dispute Resolution ("NDRP") or her evidence on either of the Landlords. The Tenant stated that she did not know she was required to serve each of the Landlords with the NDRP and her evidence. SP stated the Landlords were not served with the NDRP or any evidence by the Tenant. The Landlords stated they contacted the Residential Tenancy Branch ("RTB") and obtained the date, time, phone number and access code to enter the hearing.

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

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.

The records of the RTB state the Tenant was sent the NDRP by email on February 3, 2022 (“NDRP Email”) to the email address the Tenant provided to the RTB in her Application. Later during the hearing, the Tenant confirmed that that email address was working. The NDRP Email stated:

Hello [First Name of Tenant],

Your hearing for Dispute Resolution has been scheduled. Take these important steps before your scheduled hearing:

Prepare Your Notice of Dispute Resolution Proceeding Package

You must serve **separate** Notice of Dispute Resolution Proceeding packages to **Sean Peterson, Kristen Peterson** within three calendar days of this email, or no later than **Feb 6, 2022**.

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding
2. All evidence submitted with this application
3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114 fact sheet

Serve Your Notice of Dispute Resolution Proceeding Package to the Respondent(s)

You **must** serve the Notice of Dispute Resolution Proceeding package in one of the following ways and then provide your associated proof of service to the Residential Tenancy Branch via the [Dispute Access site](#) using your dispute access code: [Access Code Provided in Original Email]. Or you may submit these documents at the Residential Tenancy Branch or at any Service BC Centre.

Canada Post Registered Mail

1. Prepare an envelope for each respondent
2. Include 1 copy of the Notice of Dispute Resolution package in each envelope
3. Send the package(s) by Canada Post Registered Mail - Package(s) must be post marked on or before Feb 6, 2022
4. Provide the registered mail receipt(s) and tracking information to the Residential Tenancy Branch

In person

1. Print a Notice of Dispute Resolution package for each respondent
2. Serve each respondent by hand on or before Feb 6, 2022
3. You must be able to provide proof that you have served in person

Email Service

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. You can use the Address for Service (RTB-51) form to prove that the other party agreed to receive documents by email. If the other party has not agreed to email service, you can apply online for substituted service using your dispute access code: [Access Code Provided] or submit a paper application to the Residential Tenancy Branch.

1. Prepare an Email to be sent to each respondent
2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before Feb 6, 2022
3. Provide proof that you have an agreement with the other party to serve documents by email

Learn more about serving your Notice of Dispute Resolution Proceeding package.

The NDRP Email clearly stated the Tenant was to serve the NDRP and other documents ("NDRP Package"), including all of the Tenant's evidence, on each of the Landlords by February 6, 2022. The Tenant cannot now claim she did not know she was required to serve each of the Landlords with the NDRP Package. The Tenant either wilfully, or through negligence, failed to follow these instructions. As a result, the

Landlords did not have knowledge of the claims made by the Tenant or have any of the evidence submitted to the RTB by the Tenant. As a result, the Landlords did not have the opportunity to prepare for this hearing and submit any evidence in response to the claims made by the Tenant in the Application. Based on the foregoing, I dismiss the Application without leave to reapply.

Preliminary Matter – Res Judicata

Although I dismissed the Application without leave to reapply, I noted the Tenant already made an application for dispute resolution (“Prior Application”) to make the same claims against the Landlords as have been made in the Application. The Prior Application was heard by an arbitrator and the Tenant’s claims for compensation and the return of her personal property were dismissed in a decision (“Decision”) of that arbitrator dated January 6, 2022. As such, I am bound by the Decision under the legal principle of *res judicata*. Based on the above, I would still be required to dismiss the Application without leave to reapply, even if I found the Tenant had properly served the NDRP Package on each of the Landlords.

The Tenant stated she did not get notice of the time and date of the Prior Application and was unable to attend it. I told her that she may the option of making an application for a review consideration. I noted that applications for review consideration are subject to strict filing deadlines and she could call the Contact Centre at the Residential Tenancy Branch for further information.

Conclusion:

The Application is dismissed without 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: April 23, 2022

Residential Tenancy Branch