



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, OLC, LRE, FFT, MNDCT

Introduction

Pursuant to section 51 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 55;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 55;
- an order to restrict or suspend the landlord's right of entry, under section 63;
- an authorization to recover the filing fee, under section 65; and
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 60.

I left the teleconference connection open until 11:38 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M. The landlord did not attend the hearing. Tenants SC (the tenant) and LS attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 87(5) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The tenant served the notice of hearing and the evidence (the materials) via registered mail on February 18, 2022. The package was mailed to the landlord's address for

service. The tracking number and the landlord's address for service are recorded on the cover page of this decision.

The tenants moved out on April 01, 2022.

The tenant served the April 27, 2022 amendment for a monetary order in person on April 28, 2022 at 10:30 P.M. in the parking lot of the landlord's address for service. The tenant affirmed the landlord refused to receive the amendment package, the tenant did not inform the nature of the documents being served, dropped the package in front of the landlord and left the parking lot. The tenant returned five seconds later and observed that the package and the landlord were not in the parking lot.

The tenant submitted a video showing the service of the amendment package:

[landlord]: what is this?

[tenant]: it's for you

[landlord]: for what?

[tenant]: it's yours [the tenant drops the package]. You're served.

The application for an order requiring the landlord to provide services or facilities, to comply with the act and to restrict or suspend the landlord's right of entry are moot since the tenancy has ended and the tenants left the rental unit.

Section 55(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 55(4)(b) of the Act to dismiss the application for an order requiring the landlord to provide services or facilities, to comply with the act and to restrict or suspend the landlord's right of entry

The amendment form RTB-42T states: "Provide a copy of this completed form to every respondent by registered mail, in person or to an email address provided for service".

Section 82(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6, 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 64 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

Residential Tenancy Branch Policy Guideline 12 states:

Personal service

-Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord.

-Where a landlord is personally serving a tenant, the landlord must serve by leaving a copy with the tenant. In cases where there are multiple tenants, the landlord must serve a copy to each co-tenant separately.

This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

(emphasis added)

Based on the testimony offered by the tenant and the video submitted into evidence, I find the tenants did not inform the landlord that they were serving an amendment form. Furthermore, the tenants did not see the landlord picking up the amendment package. I find the tenants did not serve the amendment in accordance with section 82(1) of the Act. The only claim in this application not moot is the monetary claim.

The hearing cannot proceed fairly when the respondent has not been notified of the amendment.

Based on the foregoing, I dismiss the tenants' application with leave to reapply. Leave to reapply is not an extension of timeline to reapply.

The tenants must bear the cost of the filing fee, as the tenants were not successful.

The parties must strictly observe the Residential Tenancy Branch Rules of Procedure for serving documents and organizing evidence. The Rules of Procedure are available at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf>.

Conclusion

I dismiss the tenants' claim 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 *Manufactured Home Park Tenancy Act*.

Dated: May 16, 2022

Residential Tenancy Branch