



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

A matter regarding 2224 ALBERTA HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDL-S MNDCL-S FFL

Introduction

The landlord sought compensation pursuant to sections 67 and 72(1) of the *Residential Tenancy Act* (“Act”). The landlord also sought to apply the tenants’ security deposit toward any compensation awarded, pursuant to section 38(4)(b) of the Act.

A dispute resolution hearing was held on Thursday, June 23, 2022 at 1:30 PM. Only the tenants attended the hearing, which ended at 1:35 PM. The spelling of the tenants’ names was corrected on the application, and this is reflected on the cover page.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

Section 59(3) of the Act states that a person making an application for dispute resolution must give a copy of the application to the other party within 3 days of making it [. . .]” The procedural requirement of complying with this section of the Act is set out in Rule 3.1 of the *Rules of Procedure* (the “Rules”).

This rule states that an 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” a copy of the Notice of Dispute Resolution Proceeding, and additional documentation as outlined in Rule 3.1.

In this dispute, the landlord made its application for dispute resolution on November 16, 2021. The Notice of Dispute Resolution Proceeding was made available by the Residential Tenancy Branch to the landlord, by email, on November 24, 2021. As such, the landlord was required under the Act and the *Rules* to serve a copy of the Notice of Dispute Resolution Proceeding on the tenants no later than November 27, 2021. The tenants testified that they were served with the Notice of Dispute Resolution Proceeding on June 3, 2022, more than seven months after the landlord filed its application.

It is my finding, based on the facts, that the landlord did not serve the Notice of Dispute Resolution Proceeding on the tenants as is required by the Act and the *Rules*. The landlord's failure to serve the respondent in a timely manner—which is not only a requirement of the Act and the *Rules*, but which is also a fundamental principle and requirement of procedural fairness and natural justice—is fatal to its application.

Conclusion

The application is hereby dismissed, without leave to reapply.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 23, 2022

Residential Tenancy Branch