



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction, Preliminary and Procedural Matters-

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied on October 13, 2021 for compensation for alleged damage to the rental unit by the tenants, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The landlord and his father attended; however, the tenants did not attend the telephone conference call hearing.

As the tenants were not present at the hearing, the matter of service of the landlord's application, evidence, and Notice of Hearing (application package) to the tenants was considered.

In response to my inquiry, the landlord said he served the tenants by dropping off the documents in the tenants' mailbox. Neither tenant was present to confirm if the application package was received or, if it was, which tenant received the application package.

Additionally, the landlord submitted a significant amount of relevant evidence less than 14 days prior to the hearing. Neither tenant was present to confirm receipt of the late evidence.

Analysis and Conclusion

Section 59(3) states that an applicant for dispute resolution must give a copy of the application to the other party within 3 days.

Section 89(1) of the Act requires that the landlord's application for dispute resolution, which includes the notice of hearing, must be given by personally handing the documents to the tenant, by registered mail to the tenant's address where they reside or to their forwarding address, or by other means of service provided for in the regulations.

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) sets out requirements for the dispute resolution process. Rule 1.1 states that the "objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants".

Rule 2.5 requires applicants to the extent possible, submit copies of all documentary and digital evidence to be relied on in the proceeding at the same time as the application is submitted.

Rule 3.14 states that "Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17".

Rule 3.17 states in relevant part that "evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence".

Here, the landlord said that they served the tenants by leaving their application in the tenants' mailbox.

Additionally, the instructions to the applicant for dispute resolution makes it clear that each respondent is given their own unique Dispute Access Code.

Both parties have a right to a procedurally fair hearing and I find I cannot proceed if the landlord has provided insufficient evidence of service of their application for dispute resolution and evidence to the tenants as required by the Act and the Rules.

For these reasons, I find the landlord submitted insufficient evidence that their application package was served to the tenants according to the requirements of sections 59(3) and 89(1) of the Act.

I therefore **dismiss** the landlord's application, **with leave to reapply**.

Leave to reapply does not extend any applicable time limitation deadlines.

As I did not proceed with the landlord's application, I decline to award them recovery of the filing fee.

I note that although I dismissed the landlord's application claiming against the tenants' security deposit, I have declined to order the landlord to return the security deposit, as there was no evidence that the tenants have provided a written forwarding address.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 04, 2022

Residential Tenancy Branch