



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for the cost of emergency repairs, under sections 33 and 67;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, under section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:53 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. The tenant attended the hearing and was 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 tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands the parties are not allowed to record this hearing.

Per section 95(3) 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 tenancy agreement does not indicate the landlord's address for service. The tenant received a document from the landlord indicating her address. The tenant affirmed the document is a mutual agreement to end a tenancy. Later the tenant stated she received a notice to terminate tenancy and this notice indicated the landlord's address.

The tenant served the notice of hearing via registered mail on October 27, 2021 to the landlord's address. The tracking number and the landlord's address are recorded on the cover page of this decision.

The tenant also emailed the notice of hearing. The landlord did not authorize the tenant to serve documents via email.

The tenant said the landlord is avoiding contacting her.

Section 89(1) of the Act states:

(1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 71 (1) [director's orders: delivery and service of documents];
- (f)by any other means of service provided for in the regulations.

Regulation 43(2) states:

(2)For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

Based on the tenant's testimony, I find the landlord did not provide an email address for service, per Regulation 43(2). Thus, I find the tenant was not authorized to serve the notice of hearing via email.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

Any applicant for dispute resolution must provide an address for service. This could be a home, business or other address that is regularly monitored.
The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.
The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the

Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

The tenant did not submit a document to prove the landlord's address. I find the tenant's testimony about the landlord's address for service was not convincing. I find the tenant did not prove that she mailed the notice of hearing to the landlord's address for service.

Thus, I find the landlord did not serve the notice of hearing in accordance with section 89(1) of the Act.

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

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].

(emphasis added)

As the tenant did not serve the notice of hearing in accordance with section 89(1) of the Act, I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I dismiss the tenant's application 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 *Residential Tenancy Act*.

Dated: June 07, 2022

Residential Tenancy Branch