



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

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 an order for the landlord to return the security deposit, pursuant to section 38.

I left the teleconference connection open until 2:14 P.M. to enable the landlords to call into this teleconference hearing scheduled for 1:30 P.M. The landlords 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 tenant affirmed the landlords are SN and SV. The tenant communicated with both landlords during the tenancy and often texted with SN regarding tenancy issues.

The tenancy agreement indicates the landlords are SN and SV and does not indicate the landlord's address for service. The tenant affirmed that SN texted her the landlords' mail address. The landlords' mail address is recorded on the cover page of this decision.

The tenant texted SN on September 14, 2021 and asked for the landlords' address for service:

Tenant: Hello, I am just **preparing the 60 days notice**, as require by the lease addendum, however **I have noticed that there I no service address for the landlords SN and SV for me to send the notice (as required by the BC residential tenancy act). Can you please let me know what the proper address for service is ASAP, so I can send along the required notice.** Thanks.

Landlord: Hi you can email it to us: san*** and sar*** Thanks. There a showing on Sunday at 1pm.

Tenant: That's fine.

(emphasis added)

The tenant affirmed she served the notice of hearing and the evidence via registered mail to the landlords' mail address for service on November 10, 2021. The tenant sent one package addressed to both landlords.

The tenant affirmed that SV texted her to inform her that he would like to receive the notice of hearing via email. The tenant submitted into evidence 56 pages not numbered of text messages and emails.

The tenant emailed both landlords the notice of hearing and the evidence on November 10, 2021 to the landlord's email addresses. The email addresses mentioned in the text messages above referenced and confirmed by the tenant during the hearing are recorded on the cover page of this decision.

The tenant affirmed that after she emailed the notice of hearing and the evidence the landlords texted her.

Section 88 states how the parties can serve documents:

All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service provided for in the regulations.

Section 89(1) states specific rules for serving some documents:

(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.**

Residential Tenancy Regulation 43(2) provides:

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.

Residential Tenancy Branch Policy Guideline 12 states:

1. Address for service:

At any time, a tenant or landlord may provide an email address for service purposes. by providing an email address, the person agrees that important documents pertaining

to their tenancy may be served on them by email. A person who does not regularly check their email should not provide an email address to the other party for service purposes.

A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party.

[...]

3. Special requirements for service of documents for an application for dispute resolution:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application.

Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

[...]

Email Service

To serve documents by email, **the party being served must have provided an email address specifically for the purposes of being served documents.** If

there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

(emphasis added)

Based on the tenant's testimony, I find the tenant served the materials to both landlords via registered mail together. The tenant must serve each landlord individually.

Section 89(1) of the Act has specific rules for the service of the notice of hearing ("an application for dispute resolution"). Those rules differ from the general rules for service of documents prescribed in section 88 of the Act.

I find the tenant's testimony about SN providing an authorization for service of the notice of hearing via email was not convincing. The tenant submitted into evidence 56 pages not numbered of text messages and emails but did not submit the text message sent by SV authorizing the tenant to serve the notice of hearing via email.

The landlords authorized the tenant to serve documents under section 88 of the Act via email, not the notice of hearing. There is no evidence to demonstrate that the landlords provided an email address for service of the notice of hearing. Upon further reflection, I

find the tenant did not prove that the landlords provided an email address for service of the notice of hearing, as required by Regulation 43(2) of the Act.

Thus, I find the tenant did not serve the landlords the notice of hearing and the evidence 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 the Act, I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

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 13, 2022

Residential Tenancy Branch