



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP 1ST WEST
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNL**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the other party pursuant to section 72; and
- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55.

The landlord did not attend the hearing, although I left the teleconference connection open throughout the hearing which commenced at 11:00 a.m. and concluded at 11:25 a.m. The tenant attended the hearing and testified that on July 20, 2022, he went to the Residential Tenancy Branch, picked up the Notice of Dispute Resolution Proceedings package and sent it via courier to the landlord. A copy of the parcel shipping order from the courier company was provided as evidence by the tenant.

The tenant testified that the people at the courier office told him that sending via courier is the same as sending by registered mail. After he sent the Notice of Dispute Resolution Proceedings package to the landlord via courier, the tenant attended at the Residential Tenancy Branch office and filed the parcel shipping order as evidence for his file. At the time of filing, the accepting officer at the Residential Tenancy Branch did not advise him that he could not serve the Notice of Dispute Resolution Proceedings package by courier, according to the tenant.

Preliminary Issue

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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.

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. Part 3 of PG-12 speaks specifically to this issue:

3. SPECIAL REQUIREMENTS FOR SERVICE OF DOCUMENTS for:

- An application for dispute resolution
- except for applications by a landlord for an order of possession or an order ending a tenancy early
- A Residential Tenancy Branch decision to proceed with a review of a decision

See section 4 for service requirements for applications by a landlord for an order of possession or an order ending a tenancy early. 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.**

(bold emphasis added)

There are only four methods of service that may be used for these matters. These are:

1. Personal Service
2. Registered Mail
3. Email Service
4. A Residential Tenancy Branch Order Regarding Service

In the accompanying documents provided with the Notice of Dispute Resolution Proceedings, the tenant was provided with the form RTB-114, *Residential Tenancies Fact Sheet* which states:

Serving the Proceeding Package

Within three days of the date the Proceeding Package is made available by the RTB, the applicant must serve each respondent separately, even if they have the same mailing address with the Proceeding Package as well as copies of evidence submitted with the application (“see “Preparing evidence” below). Note: these three days do not include the date the Proceeding Package is made available by the RTB. The applicant must serve the Proceeding Package and evidence on each respondent separately, either:

- in person (by personally leaving a copy with each tenant, each landlord or the landlord’s agent); or
- by registered mail; or
- for a landlord’s application for an order of possession only: by attaching it to the door or another conspicuous place or by personally leaving a copy with an adult who apparently resides with the tenant.

The tenant did not serve the application for dispute resolution in a method that complies with section 89 of the Act. As such, I dismiss the tenant’s application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the Act, including the deadlines for applying for dispute resolution. I note that during the hearing, I made the tenant aware of section 66(3) of the Act which states:

The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Conclusion

The application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the Act, including the deadlines for applying for dispute resolution.

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: August 08, 2022

Residential Tenancy Branch