



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, LRE, OLC

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 to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation), or tenancy agreement, under section 67;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62.

I left the teleconference connection open until 10:01 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.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 he 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 notice of hearing is dated April 20, 2022.

The tenant affirmed he served the notice of hearing within the legal timeframe. I asked the tenant twice to explain how and when he served the notice of hearing. The tenant stated he served it via email on April 23, 2022 at 3:00 P.M. The tenant testified he is “pretty sure” the landlord authorized him to serve documents via email.

The tenant confirmed receipt of the June 10, 2022 substitute service decision (the decision). It states:

I order the tenant to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the tenant has served the landlord in accordance with this order. If possible, the tenant should provide a read receipt confirming the e-mail was opened and viewed by the landlord.

Conclusion

The tenant is granted an order for substituted service. The tenant may serve the landlord the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, along with a copy of this substituted service decision, to the landlord’s e-mail address as set out above.

The tenant did not submit a print-out of the email sent. The tenant said he may have submitted the print-out to another Residential Tenancy Branch (RTB) file referenced on the cover page of this decision.

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)

RTB Guideline 12 states:

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 decision clearly orders the tenant to serve the notice of hearing, the evidence and the substitute service decision on June 10, 2022. The tenant affirmed he emailed the landlord on April 23, 2022 and did not provide the print-out of the email. I find the tenant failed to prove service of the notice of hearing and the decision in accordance with the decision.

Based on the foregoing, I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The tenant should strictly follow Rules of Procedure 3.7 and 3.14 if he submits a new application. This document is available at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf>

The tenant may seek legal advice if he submits a new application.

Conclusion

I dismiss the 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: August 05, 2022

Residential Tenancy Branch