



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. 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.

The tenant confirmed his email address for service of this Decision.

Preliminary Issue- Service

The tenant testified that he served the landlord with his Application for Dispute Resolution via Purolator but did not recall when. No proof of service documents were entered into evidence. I informed the tenant that Purolator is not an approved method of service under section 89 of the *Act* and that service via Canada Post registered mail

is an approved method of service. The tenant then testified that he must have sent his application for dispute resolution via Canada Post but he could not remember.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states:

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].

Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Section 89(1) of the *Act* states that 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*].

I find that the tenant has not proved, on a balance of probabilities, that the landlord was served with this Application for Dispute Resolution because no proof of service documents were entered into evidence, the landlord did not attend, and the tenant's testimony regarding the alleged method of service was inconsistent. I dismiss the tenant's application for dispute resolution with leave to reapply for failure to prove service in accordance with section 89 of the *Act*.

I notified the applicant that if he wished to pursue this matter further, he would have to file a new application. I cautioned the tenant to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

I find that since the tenant's application was dismissed, the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I dismiss the tenant's application to recover the \$100.00 filing fee without leave to reapply.

The tenant's application for a Monetary Order for damage or compensation under the *Act* is dismissed 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: September 26, 2022

Residential Tenancy Branch