



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FFT

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- an order to seek the return of all of the security deposit and/or pet deposit pursuant to section 38; and
- authorization to recover the filing fee of the Application from the Landlord.

This matter was set for hearing by telephone conference call at 1:30 pm on October 25, 2022. The Landlord did not attend this hearing. The teleconference line remained open while the phone system was monitored until the hearing ended at 2:00 pm and the Landlord did not call into the hearing during that 30-minutes period. The Tenant attended the hearing and she 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 Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

Preliminary Matter – Service of NDRP on the Landlord

The Tenant stated she served the NDRP on the Landlord's door in the presence of a witness. The Tenant submitted two pictures of the NDRP posted on a door.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") 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].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

[emphasis in italics added]

Section 89 of the Act states:

89(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.

Rule 3.1 of the RoP required the Tenant to serve the NDRP on the Landlord within 3 days of receipt of the NDRP from the RTB. The Tenant did not submit any evidence that the Landlord had consented to service of documents on her by email. The Tenant did not submit any evidence she had obtained an order from the RTB for substituted service allowing her to serve the NDRP on the Landlord's door. As such, the only options the Tenant had under section 89(1) of the Act for service of the NDRP on the Landlord was either by (i) leaving a copy of it with the Landlord or (ii) mailing it to the Landlord by registered mail. The Tenant stated she served the NDRP on the Landlord's door in the presence of a witness. As such, the Tenant did not comply with the service requirements of section 89(1) of the Act. I find the Landlord was not served with the NDRP as required by Rule 3.1 of the RoP. Based on the foregoing, I dismiss the Application with leave to reapply. The Tenant has the option of making a new application for dispute resolution to make her claims and to serve the Notice of Dispute Resolution Proceeding for that application on the Landlord using one of the methods prescribed by section 89(1) of the Act.

As I have dismissed the Application, I find the Tenant is not entitled to recover the filing fee of the Application from the Landlord.

Conclusion

The Application 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: October 25, 2022

Residential Tenancy Branch