



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, OLC, RR

Introduction

This hearing dealt with the tenant's two applications for dispute resolution, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that he is not recording this hearing. The tenant testified that everything around him is being recorded because he is being monitored by the NSA and is the target of an organized crime hit. I instructed the tenant to stop any and all recordings. The tenant testified that he is not in control of the recordings.

The parties were advised that 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."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The tenant testified that he never received the Notice of Dispute Resolution Proceeding Packages from the Residential Tenancy Branch because the landlord stole his physical mail. The tenant testified that because the landlord stole his mail, he did not serve the landlord with the required materials for either application for dispute resolution.

The landlord testified that he did not steal the tenant's mail. The landlord testified that he was not served with any documents pertaining to either of the tenant's applications for dispute resolution. The landlord testified that the tenant verbally informed him of one of the tenant's applications for dispute resolution and that he called the Residential Tenancy Branch and was provided with the hearing details.

The Notice of Dispute Resolution Proceeding Packages were e-mailed to the tenant, at the email address provided by the tenant on the applications for dispute resolution, on June 15, 2022 (the tenant's first application) and September 7, 2022 (the tenant's second application).

I find that the tenant has not proved, on a balance of probabilities, that the landlord stole his mail. I note that since the Dispute Resolution Proceeding Packages were not sent via regular mail, but via email, the alleged mail theft would not have prevented the tenant from serving the landlord.

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*].

Based on the testimony of both parties, I find that the tenant did not serve the landlord with his applications for dispute resolution in a manner required under section 89 of the *Act*. I dismiss the tenant's applications for dispute resolution with leave to reapply for failure to serve 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 applicant to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

Conclusion

The tenant's applications for dispute resolution are 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 17, 2022

Residential Tenancy Branch