



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 07, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause (the “Notice”)
- To dispute a rent increase that is above the amount allowed by law
- To recover the filing fee

The Tenant appeared at the hearing with A.S., their son, who also lived in the rental unit. The Landlords appeared at the hearing.

The parties agreed the Tenant moved out of the rental unit June 30, 2022. The Tenant wanted to continue with the dispute of the Notice. I told the Tenant I would not hear a dispute of the Notice when the Tenant has moved out and the tenancy is over. The dispute of the Notice is dismissed without leave to re-apply.

The Tenant wanted to proceed with the dispute of a rent increase, and I told the parties I would hear this issue as well as the request to recover the filing fee.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package.

The Landlords testified that they did not receive the hearing package from the Tenant and only received an email from the RTB about the hearing date and time. The Tenant testified that the hearing package was emailed to the Landlords June 27, 2022; however, the Tenant had not submitted a copy of these emails.

The Tenant has the onus to prove service of the hearing package on the Landlords. The Tenant sought and was granted a substituted service order stating they could serve the Landlords by email. The decision issued June 23, 2022, states:

For this reason, I allow the tenant substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by e-mail to each landlord at their respective e-mail addresses indicated on the first page of this decision.

I order the tenant to provide proof of service of the e-mails which may include printouts of the sent items, confirmation of delivery receipts, or other documentation to confirm the tenant has served the landlords in accordance with this order. If possible, the tenant should provide read receipts confirming the e-mails were opened and viewed by the landlords.
(emphasis added)

Given the conflicting testimony of the parties about service of the hearing package, and absence of documentary evidence of service, I was not satisfied the hearing package was served on the Landlords as required by rule 3.1 of the Rules. Further, I found the Tenant failed to comply with the substituted service decision issued June 23, 2022, by failing to provide proof of service of the e-mails.

I told the Landlords the Application would usually be dismissed with leave to re-apply given the Tenant failed to prove service of the hearing package but that I would proceed with the hearing if the Landlords were prepared to deal with the dispute of a rent increase today. The Landlords were not agreeable to proceeding with the dispute of a rent increase today. Given this, I dismissed the dispute of a rent increase with leave to re-apply. The Tenant can re-apply for this; however, the Tenant must file a new Application for Dispute Resolution and must serve the Landlords in accordance with the *Residential Tenancy Act* (the “Act”) and Rules. The Landlords provided their addresses for service during the hearing, and these are noted on the front page of this decision. The Landlords did not agree to being served by email.

Given the Tenant was not successful in the Application, the Tenant is not entitled to recover the filing fee. This request is dismissed without leave to re-apply.

Conclusion

The dispute of the Notice and request to recover the filing fee are dismissed **without** leave to re-apply. The dispute of a rent increase is dismissed **with** leave to re-apply. This decision does not extend any time limits under the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 31, 2022

Residential Tenancy Branch