



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE LEAF PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRT, MNDCT, MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (Application) filed by the Tenants under the *Residential Tenancy Act* (the Act) on March 16, 2022, seeking:

- Recovery of costs incurred to complete emergency repairs during the tenancy;
- Compensation for monetary loss or other money owed;
- The return of all or a part of their security deposit and/or pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and an agent for Landlord T.D. (the Agent). All testimony provided was affirmed. The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. In the hearing the Agent testified that they were unaware of the Application or hearing date and time until they received an auto-generated email from the Residential Tenancy Branch (the Branch). Records at the Branch indicate that on March 24, 2022, the Tenants were emailed the Notice of Dispute Resolution Proceeding

(NODRP) package, which includes a copy of the Application and the Notice of Hearing (NOH), for service on the Landlord by March 27, 2022.

When asked how and when the Tenants served the Landlord with the NODRP and the documentary evidence before me, the Tenants stated that they did not serve anything on the Landlord as they were unaware of the requirement to do so.

Section 59 of the Act states the following with regards to the service of the Application on the Respondent:

Starting proceedings

59(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package 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].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. If a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Further to this, information on the requirement to serve the NODRP and evidence on the respondent is contained in the NODRP package emailed to the Tenants by the Branch on March 24, 2022, and reiterated in an auto-generated reminder email from the Branch sent to the Tenants on October 27, 2022. As a result of the above, I find that the Tenant's failure was a result of their lack of due diligence in reviewing and following information sent to them by the Branch and contained in the Act and the Rules of Procedure.

The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlord was not served with the Application, Notice of Hearing, or the evidence before me, I find that they did not have a fair opportunity to know the case against them or properly prepare evidence or testimony in their defense. As a result, the Application is dismissed with leave to reapply, except for the claim for recovery of the filing fee, which is dismissed without leave to reapply. This is not an extension of any statutory deadline.

Conclusion

The Tenants' Application seeking recovery of costs incurred to complete emergency repairs during the tenancy, compensation for monetary loss or other money owed, and the return of all or a part of their security deposit and/or pet damage deposit is dismissed with leave to re-apply. This is not an extension of any statutory deadline. The claim for recovery of the filing fee for this Application is dismissed without leave to reapply.

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

Dated: November 17, 2022

Residential Tenancy Branch