



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNRT, RR; CNR

Introduction

This hearing dealt with the tenant's first application, filed on June 23, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 15, 2022 ("10 Day Notice"), pursuant to section 46;
- a monetary order of \$499.00 for the cost of emergency repairs, pursuant to section 67; and
- an order allowing the tenant to reduce rent of \$499.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

This hearing dealt with the tenant's second application, filed on August 30, 2022, pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 15, 2022 ("10 Day Notice"), pursuant to section 46.

The landlord did not attend this hearing, which lasted approximately 14 minutes. 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.

This hearing began at 11:00 a.m. and ended at 11:14 a.m. I monitored the teleconference line throughout this hearing. 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 people who called into this teleconference.

The tenant confirmed his name and spelling. He provided the rental unit address. He provided his mailing address for me to send this decision to him after the hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the tenant affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the tenant. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Throughout this hearing, I was required to repeatedly caution the tenant for interrupting me and speaking at the same time as me. The tenant said that I was “asking too many questions.” I notified the tenant that I was required to ask questions regarding his applications and service of same, in order to conduct and proceed with this hearing.

Preliminary Issue – Service of Tenant’s Two Applications

The tenant initially stated that he only had his second application in front of him during this hearing, not the first application. He then claimed that the second application showed the “associated file” number for the first application. He said that he only picked up the second application from Service BC (“SBC”), not the first application.

The tenant testified that he served the landlord with both applications for dispute resolution hearing packages, by way of registered mail. He said that he did not know the dates of service for either application. He did not provide any Canada Post tracking numbers for the registered mailings. He said that SBC was supposed to serve the applications.

Section 59(3) of the *Act* states the following:

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.

Rule 3.1 of the RTB *Rules* states, in part:

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].*

The tenant was provided with two application packages from the RTB, including instructions regarding the hearing process. The tenant was provided with two documents entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing both applications. The two NODRP documents contain the phone number and access code to call into this hearing.

The two NODRP documents state the following at the top of page 2, in part (my emphasis added, which was referenced by me during this hearing):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- Parties (or agents) must participate in the hearing at the date and time assigned.*
- The hearing will continue even if one participant or a representative does not attend.*

- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

Section 89(1) of the Act outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

89 (1) An application for dispute resolution ..., 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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

***Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing** the date of service, the address of service, and that **the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

According to the online RTB dispute access site, the RTB contacted the tenant by telephone on July 12, 2022 to pick up his first application package at an SBC office and serve it by July 15, 2022. I informed the tenant of the above information during this hearing.

According to the online RTB dispute access site, the RTB contacted the tenant by telephone on September 15, 2022 to pick up his second application package and the

tenant confirmed that he would do so. I informed the tenant of the above information during this hearing.

According to the online RTB dispute access site, the RTB contacted the tenant by telephone on October 6, 2022, asking if this hearing was still required for both of his applications and the tenant did not answer or respond. I informed the tenant of the above information during this hearing.

I find that the tenant did not serve the landlord with the tenant's two applications, as required by sections 59(3) and 89 of the *Act*, Rule 3.1 of the RTB *Rules*, Residential Tenancy Policy Guideline 12, and as stated on the two NODRP documents that were provided by the RTB to the tenant with both of his application packages. I informed the tenant that he did not provide dates of service or Canada Post tracking numbers to prove service of his two applications. The tenant was provided with ample time of 14 minutes during this hearing, in order to search for and provide service information and failed to do so.

I notified the tenant that both of his applications were dismissed with leave to reapply. I notified him that he could file new applications, if he wants to pursue his claims in the future. The tenant confirmed his understanding of same.

Conclusion

Both of the tenant's applications are dismissed in their entirety, 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: November 08, 2022

Residential Tenancy Branch