



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlords' application, filed on March 29, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$6,986.48 for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two tenants, "tenant CC" and "tenant MC," did not attend this hearing, which lasted approximately 11 minutes. The two landlords, landlord SA ("landlord") and "landlord TA," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:41 p.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 two landlords and I were the only people who called into this teleconference.

Both landlords confirmed their names and spelling. The landlord provided her email address for me to send this decision to both landlords after the hearing.

The landlord provided the rental unit address. She identified herself as the primary speaker for both landlords at this 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, both landlords separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both landlords. I informed them that I could not provide legal advice to them. I notified them that they could hire a lawyer to obtain legal advice. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlords’ Application

The landlord testified that the tenants were served with one copy of the landlords’ application for dispute resolution hearing package on April 11, 2022, by way of email. She said that only one email address, for tenant CC, was provided for service, as per page 5 of the written tenancy agreement. She claimed that she did not provide a copy of the email as proof of service. She explained that she provided an email from tenant CC from November 24, 2022.

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 landlords were provided with an application package from the RTB, including instructions regarding the hearing process. The landlords were provided with a document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

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 states the following (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];*
- (f) by any other means of service provided for in the regulations.***

Section 43(2) of the *Residential Tenancy Regulation* ("Regulation") states the following (my emphasis added):

*(2) For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by **emailing a copy to an email address provided as an address for service by the person.***

Residential Tenancy Policy Guideline 12 states the following:

5. SERVICE OF DOCUMENTS GENERALLY

- *by any other means of service prescribed in the regulations*

*The Regulation to the Residential Tenancy Act and the Manufactured Home Park Tenancy Act prescribes service to an email address provided for service as an acceptable method of serving documents. Documents may be served by sending a copy of the document to the email address provided as an address for service by the person to be served. If no email address for service has been provided, then this method of service should not be used. **Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.***

If service by email is used, the person serving the document will need to provide proof that the document sent by email was sent to the email address provided by the other party. Satisfactory proof may include a print out or screen shot of:

- *RTB 51 – Address for Service or other document that sets out the party's email address for service;*

- **the sent item, including the email address the item was sent to;**
- **a confirmation of delivery receipt;**
- **a response to the email by the party served;**
- **a read receipt confirming the email was opened, or**
- **other documentation to confirm the party has been served.**

According to the online RTB dispute system, the landlords were sent an email by the RTB on April 7, 2022, to serve the tenants with their application by April 10, 2022.

I find that the landlords failed to provide sufficient evidence that both tenants were each served with the landlords' application for dispute resolution hearing package, as required by sections 59 and 89 of the *Act*, section 43 of the *Regulation*, Residential Tenancy Policy Guideline 12, Rule 3.1 of the RTB *Rules*, and the NODRP.

I find that the landlords failed to serve the tenants within 3 days, as April 11, 2022 is not within 3 days of April 7, 2022. Further, the landlords only sent one copy of their application to the tenants, not two copies, one for each tenant, as required.

I informed the landlords that they did not provide sufficient documentary evidence, including any emails, to prove service, with this application. I notified them that the tenants did not appear at this hearing to confirm receipt of the above documents. I informed them that the email, dated November 24, 2022, that they submitted from tenant CC, does not state that the tenants were sent or received any application documents from the landlords. I also notified them that the email they provided is late, less than 14 days prior to this hearing, contrary to Rule 3.14 of the RTB *Rules*.

During this hearing, I informed the landlords that their application was dismissed with leave to reapply, except for the \$100.00 filing fee. I notified them that they could file a new application, if they want to pursue this matter in the future. The landlord confirmed her understanding of same.

Conclusion

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlords' 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: November 29, 2022

Residential Tenancy Branch