



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlord's application, filed on July 7, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55;
- a monetary order of \$2,105.04 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 tenant did not attend this hearing, which lasted approximately 19 minutes. The landlord 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 11:19 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 landlord and I were the only people who called into this teleconference.

The landlord confirmed his and the tenant's names and spelling. He provided his email address for me to send this decision to him after the hearing.

The landlord confirmed that he owns the rental unit. He provided the rental unit address.

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 landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. I informed him that I could not provide legal advice to him. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord’s Application and Evidence

The landlord stated that he served the tenant with his application for dispute resolution on July 24, 2022, in person and by email. He said that the tenant did not respond to his email. He claimed that he did not provide a copy of this email to the RTB, as proof of service.

When I asked the landlord why the application was not served within 3 days of the notice of hearing date of July 20, 2022, he said that it was his error.

The landlord claimed that he served evidence to the tenant in March and May 2022. When I asked how that was possible when his application was filed on July 7, 2022, he said that he gave notices to the tenant beforehand.

The landlord stated that he served evidence to the tenant on October 26, 2022, by way of email. He claimed that he did not provide a copy of the email to the RTB, as proof of service, because he was not prompted to do so by the RTB, when he applied on the online RTB dispute access site.

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 landlord was provided with an application package from the RTB, including instructions regarding the hearing process. The landlord was provided with a document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing his application. The landlord confirmed receipt of the above document and said that he had a copy in front of him during this hearing. 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, which was read aloud 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.*

I informed the landlord that, according to the online RTB dispute access site, he was sent an email by the RTB on July 20, 2022, to serve the tenant with his application by July 23, 2022. I find that the landlord failed to do so. I informed the landlord that March and May 2022, are both prior to the application being filed on July 7, 2022, and July 24, 2022, is not within 3 days of July 20, 2022.

I find that the landlord failed to provide sufficient evidence that the tenant was served by email, with the landlord's application for dispute resolution and evidence, as required by sections 59 and 89 of the *Act*, Rule 3.1 of the *RTB Rules*, and the NODRP. I informed the landlord that he did not provide sufficient documentary evidence, including any emails, to prove service, with his application. The tenant did not appear at this hearing to confirm receipt of the above documents.

I repeatedly informed the landlord that he could proceed with this hearing based on the order of possession claim only, since he served his application for dispute resolution to the tenant in person on July 24, 2022. This is the only urgent priority issue, since the monetary claims can be severed at a hearing, pursuant to Rule 2.3 and 6.2 of the *RTB Rules*. I notified him that I could not consider his written evidence package at the hearing or in my decision, since he did not have proof of service by email, on October 26, 2022.

The landlord asked for an extension to serve the above evidence to the tenant. I informed him that he could not have an extension, since he had ample time to serve the tenant prior to this hearing, which occurred on November 25, 2022, almost 5 months after he filed this application on July 7, 2022.

The landlord repeatedly asked for leave to reapply, stating that he did not want to proceed with this hearing, even for the order of possession claim only, without his written evidence being considered at the hearing or in my decision.

Accordingly, and based on the landlord's request, I informed the landlord that his application was dismissed with leave to reapply, except for the \$100.00 filing fee. I notified him that he could file a new application, if he wants to pursue this matter in the future. He confirmed his understanding of same.

Conclusion

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

The remainder of the landlord's 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 25, 2022

Residential Tenancy Branch