



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlords' application, filed on March 10, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$375.00 for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord HH" and the two tenants, "tenant DS" and "tenant AH," did not attend this hearing, which lasted approximately 10 minutes. Landlord SH ("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 1:30 p.m. and ended at 1:40 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 landlord and I were the only people who called into this teleconference.

The landlord confirmed his name and spelling. He provided his email address for me to send this decision to him after the hearing. He stated that he had permission to represent landlord HH at this hearing (collectively "landlords").

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. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlords’ Application

The landlord stated that both tenants were served with separate copies of the landlords’ application for dispute resolution hearing package on March 4, 2022. When I asked how that was possible when the landlords filed this application on March 10, 2022, and the notice of hearing was issued on March 29, 2022, the landlord then claimed that the tenants were both served by email on April 4, 2022.

The landlord claimed that he “forgot” to include proofs of service by email, so he uploaded them to the online RTB dispute access site late, on the date of this hearing, November 22, 2022.

I informed the landlord that the landlords were provided with a substituted service decision, dated March 25, 2022, made by an Adjudicator (“SS decision”), to serve the tenants by email. The landlord confirmed receipt of same.

At page 3 of the SS decision, the Adjudicator stated (emphasis in original):

I order the landlord to provide proof of service of the e-mails which may include print-outs of the sent items, confirmation of delivery receipts, or other documentation to confirm the landlord has served the tenants in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mails were opened and viewed by the tenants.

...

The landlord is granted an order for substituted service. The landlord may serve the tenants the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenants’ e-mail addresses as set out above.

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 his 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.*

According to the online RTB dispute system, the landlords were sent an email by the RTB on March 29, 2022, to serve the tenants with their application by April 1, 2022. I find that the landlords failed to do so. I informed the landlord that March 4, 2022, is prior to the application being filed on March 10, 2022. April 4, 2022 is not within 3 days of March 29, 2022.

According to the online RTB dispute system, the landlords called into the RTB on April 4, 2022, claiming that the RTB email with the application package was sent to their “junk email” folder, and the landlords were informed by the RTB that the 3-day legislated timeline to serve the application could not be changed, so the landlords could withdraw their application or proceed with the hearing. According to the online RTB dispute system, on October 20, 2022, the landlords were sent an email by the RTB asking if the hearing was still required but the landlords did not respond, and on November 14, 2022, the landlords were phoned by the RTB to ask if the hearing was still required, and they confirmed that it was required.

I find that the landlords failed to provide sufficient evidence that both tenants were properly served with the landlords’ application for dispute resolution hearing package and the SS decision within 3 days, as required by sections 59 and 89 of the Act, Rule 3.1 of the RTB *Rules*, the SS decision, and the NODRP.

I informed the landlord that the landlords did not provide sufficient documentary evidence to prove service, with this application. The landlord agreed that the email to tenant AH does not show any attachments were sent to her, including the SS decision, the landlords’ application, the notice of hearing, or any evidence. I notified him that both email proofs of service were provided late to the RTB on the date of this hearing, contrary to Rule 3.14 of the RTB *Rules*, which requires the landlords’ evidence to be provided at least 14 days prior to this hearing. Further, the above required documents were not sent within the 3-day time period, the landlords were warned about this by the RTB prior to this hearing, the landlords were provided with a chance to withdraw their application, and the landlords chose to proceed with this hearing after repeated emails

and phone calls from the RTB. The tenants did not appear at this hearing to confirm receipt of the above documents.

Rule 2.5 of the RTB *Rules* states the following (my emphasis added):

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- **a detailed calculation of any monetary claim being made;***
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

Pursuant to section 59(2)(b) of the *Act*, the landlords' application must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the tenants with notice and enough information to know the landlords' claims so that they can properly respond.

Pursuant to section 59(5)(a) of the *Act*, I can refuse to accept an application if it does not disclose a dispute that may be determined. The landlords filed this application, and, as the applicants, have the burden of proof, on a balance of probabilities, to apply for the correct claims, provide sufficient particulars and evidence of their claims, and prove their claims at a hearing on a balance of probabilities.

I informed the landlord that the landlords failed to provide sufficient particulars of their monetary claims. I notified him that the landlords indicated a total monetary claim of \$375.00 in their application and monetary order worksheet, they did not sufficiently describe this claim in the monetary order worksheet, and they did not include the amounts of the deposits in the monetary order worksheet, that they seek to retain.

The landlords filed this application on March 10, 2022, and this hearing occurred on November 22, 2022. The landlords had ample time of almost 8.5 months, to know the full details of their application, provide an accurate and detailed monetary order worksheet, serve proper and timely notice to the tenants, and provide proofs of same in a timely manner, prior to this hearing, but failed to do so.

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

The landlords are cautioned about using the same SS decision to email future application documents to the tenants, given that the SS decision was made on March 25, 2022, and it may not be relevant to a future application.

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 22, 2022

Residential Tenancy Branch