



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT**

Introduction

This hearing dealt with an application filed pursuant the *Residential Tenancy Act* (the “Act”) for a monetary order for damages or compensation pursuant section 67.

The respondent did not attend this hearing, although I left the teleconference hearing connection open until 1:35 p.m. in order to enable the respondent to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the applicant and I were the only ones who had called into this teleconference.

The applicant attended the hearing and testified that she did not serve the respondent with the Notice of Dispute Resolution Hearing package (“notice”) within 3 days of the notice being made available to her. The applicant had been in the hospital due to an ankle injury when the Notice of Dispute Resolution Hearing package was sent to her via email by the Residential Tenancy Branch. The applicant testified that she does not know the residential address where the respondent lives, and that the respondent’s phone number had changed. The applicant testified that she posted a copy of the Notice of Dispute Resolution Hearing to the rental unit in dispute but acknowledged the respondent does not reside there.

Preliminary Issue

Residential Tenancy Branch Rule 3.1 states:

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].

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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.*

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. (Excerpt reprinted below)

PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

I find that posting the Notice of Dispute Resolution Proceedings to the door of the rental unit is insufficient service as contemplated by section 89 of the *Act*.

The principles of natural justice and procedural fairness require that the respondent be put on sufficient notice of the claim against them and that they have had adequate time and opportunity to respond to the application. Based on the applicant's lack of evidence

regarding service, I am not satisfied that the respondent was properly served with the documents within 3 days, as set out in Rule 3.1 of the Residential Tenancy Branch Rules of Procedure. As such, I dismiss the application with leave to reapply.

Conclusion

This application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*.

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 10, 2022

Residential Tenancy Branch