



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlord's application, filed on March 8, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$2,394.85 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 13 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 1:30 p.m. and ended at 1:43 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.

The landlord confirmed that he is an agent for the owner of the rental unit. He said that he had permission to represent the owner at this hearing. He said that he was managing this rental unit, so his name personally appears as the landlord on the tenancy agreement and this application. 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

The landlord stated that he did not know how or when the tenant was served with the landlord’s application for dispute resolution hearing package. He claimed he could not serve the tenant in person. He then said that the tenant was served on February 24, 2022. When I asked how that was possible when the landlord filed this application on March 8, 2022, he then claimed that the tenant was served by email on May 18, 2022. When I asked why the application was not served within 3 days of the notice of hearing date of March 16, 2022, he said he did not know.

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 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 landlord was sent an email by the RTB on March 16, 2022, to serve the tenant with his application by March 19, 2022. I find that the landlord failed to do so, as he did not provide any valid service dates for same. I informed the landlord that February 24, 2022, is prior to the application being filed on March 8, 2022, and May 18, 2022, is not within 3 days of March 16, 2022.

I informed the landlord that he was provided with a substituted service decision, dated May 16, 2022, made by an Adjudicator ("SS decision"). The landlord confirmed 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-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

...

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

The landlord agreed that he did not provide copies of any emails as proof of service of the SS decision or the landlord's application for dispute resolution hearing package.

I find that the landlord failed to provide sufficient evidence that the tenant was served with the landlord's application for dispute resolution hearing package and the SS decision, 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 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.

During this hearing, 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.

I cautioned the landlord about using the same SS decision to email future application documents to the tenant, given that the SS decision was made on May 16, 2022, and it may not be relevant to a future application. 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 03, 2022

Residential Tenancy Branch