



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, DRI, FFT**
OPR-DR, MNR-DR

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- disputation of a rent increase, pursuant to section 43, and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55; and
- a Monetary Order for unpaid rent, pursuant to section 67.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. in order to enable the landlords to call into this teleconference hearing scheduled for 9:30 a.m. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. The tenants' interpreter also attended and affirmed to translate to the best of his ability. I also confirmed from the teleconference system that the tenants, their interpreter and I were the only ones who had called into this teleconference.

The tenants were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenants testified that they are not recording this dispute resolution hearing.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the landlords, I order the landlords' application be dismissed without liberty to reapply.

The tenants testified that they served the landlord with their application for dispute resolution in person at the beginning of July 2022. No proof of service documents were entered into evidence.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

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].

Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute

Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Section 89(1) of the *Act* states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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*].

I find that the tenants have not proved, on a balance of probabilities that the landlords were served with their application for dispute resolution because the tenants did not submit any proof of service documents and the landlords did not attend this hearing. I dismiss the tenants' application for dispute resolution with leave to reapply for failure to prove service served in accordance with section 89 of the *Act*.

I find that since the tenants' application was dismissed, the tenants are not entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

I notified the tenants that if they wished to pursue this matter further, they would have to file a new application. I cautioned the tenants to be prepared to prove service at the next hearing, as per section 89 of the *Act*. I cautioned the tenants that leave to reapply is not an extension of any limitation period.

Conclusion

The landlords' application for dispute resolution is dismissed without leave to reapply for failure to attend the hearing.

The tenants' application for the recovery of the filing fee is dismissed without leave to reapply. The remainder of the tenants' application is dismissed with leave to reapply for failure to prove service, in accordance with section 89 of 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 14, 2022

Residential Tenancy Branch