



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNRL-S, MNDL-S, MNDCL-S, FFL
Tenant: MNSDB-DR, FFT

Introduction

The Tenant made an Application for Dispute Resolution on January 19, 2022 to dispute the 10-Day Notice to End Tenancy for Unpaid Rent the Landlord issued on January 16, 2022. They also applied for reimbursement of the Application filing fee.

On February 9, 2022 the Landlord made an Application for Dispute Resolution via direct request for an order of possession, and recovery of unpaid rent amounts. They also applied for their Application filing fee. With the Tenant's Application already in place concerning this tenancy, the Landlord's Application was joined to the participatory hearing already set down for the Tenant.

The matter proceeded to a participatory hearing on April 19, 2022, pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on April 19, 2022.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present affirmed testimony during the hearing.

Preliminary Matter – Landlord Application

The Landlord filed their Application at the Residential Tenancy Branch on April 8, 2022. The Branch forwarded the Notice of Dispute Resolution Proceeding document (the “Notice”) on April 20, 2022.

The Landlord stated, under affirmed oath in the hearing, that they sent this Notice to the Tenant on April 29, 2022. This was via registered mail and the Landlord did not provide a record of that registered mail tracking number, nor a record of the item tracking report. The Landlord in the hearing provided that the Tenant received the item on May 24, 2022. The Tenant confirmed this approximate date in the hearing.

The *Act* s. 59(3) sets out that an applicant must give a copy of the application within 3 days of making it. Additionally, the *Residential Tenancy Branch Rules of Procedure*, which are crafted to ensure a fair process, specify the documents to be served by an applicant (on this Application, the Landlord) to a respondent (on this Application, the Tenant). These are: the Notice of Dispute Resolution Proceeding provided when applying, the Respondent instructions for Dispute Resolution; a process fact sheet; and evidence submitted by the applicant.

The record of communication at the Residential Tenancy Branch shows the Branch sent the Notice of Dispute Resolution Proceeding to the Landlord on April 20, 2022. This message contains the following instructions:

Prepare Your Notice of Dispute Resolution Proceeding Package

You must serve **separate** Notice of Dispute Resolution Proceeding packages to **[the Tenant]** within three calendar days of this email, or no later than **Apr 23, 2022**.

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding
2. All evidence submitted with this application
3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114 fact sheet

Serve Your Notice of Dispute Resolution Proceeding Package to the Respondent(s)

You **must** serve the Notice of Dispute Resolution Proceeding package in one of the following ways and then provide your associated proof of service to the Residential Tenancy Branch via the [Dispute Access site](#) using your dispute access code: **[code]**. Or you may submit these documents at the Residential Tenancy Branch or at any Service BC Centre.

Canada Post Registered Mail

1. Prepare an envelope for each respondent
2. Include 1 copy of the Notice of Dispute Resolution package in each envelope
3. Send the package(s) by Canada Post Registered Mail - Package(s) must be post marked on or before **Apr 23, 2022**
4. Provide the registered mail receipt(s) and tracking information to the Residential Tenancy Branch

In person

1. Print a Notice of Dispute Resolution package for each respondent
2. Serve each respondent by hand on or before **Apr 23, 2022**
3. You must be able to provide proof that you have served in person

Email Service

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. You can use the [Address for Service](#) (RTB-51) form to prove that the other party agreed to receive documents by email. If the other party has not agreed to email service, you can [apply online for substituted service](#) using your dispute access code: [code] or submit a [paper application](#) to the Residential Tenancy Branch.

1. Prepare an Email to be sent to each respondent
2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before **Apr 23, 2022**
3. Provide proof that you have an agreement with the other party to serve documents by email

Learn more about [serving your Notice of Dispute Resolution Proceeding package](#).

The Landlord in the hearing stated they did not send the Notice of Dispute Resolution Proceeding to the Tenant until April 29, 2022. The *Act* requires proper service in line with administrative fairness in which a party's legal rights and obligations are challenged. I find the Residential Tenancy Branch delivered the Notice document to the

Landlord in due course; however, the Landlord failed to serve it as the *Act* requires. I dismiss the Landlord's Application for Dispute Resolution for this reason.

In the two days prior to the hearing, the Landlord made a number of extra submissions. Reviewing this took a longer time in the hearing. The Landlord had every opportunity for guidance by contacting the Residential Tenancy Branch, and the *Residential Tenancy Branch Rules of Procedure* are easily available for guidance on timelines and format of evidence. In the hearing Landlord's counsel advised they did not provide their own written submission to the other party; however, they provided this to the Residential Tenancy Branch. This runs counter to the tenets of basic administrative fairness.

Unfortunately, in the Landlord's case, the volumes of extra evidence, its disorganization, staggered disclosure, as well as extremely late submissions here frustrated the hearing process. It appears this multiplied the overall costs for hearing preparation to the Landlord. As well, this lends credence to the Tenant's account of how this caused them to last-minute scramble to craft an adequate response to the Landlord's claims, and in compliance with timelines for response and guidelines for proper service.

In the hearing I advised I was considering an adjournment with provisions for service; however, on my review I find the Landlord did not comply with timelines throughout this process.

For these reasons, I dismiss the Landlord's Application in its entirety. They are not entitled to recovery of the Application filing fee.

The Tenant's Application

The Tenant applied to the Residential Tenancy Branch via the Direct Request method on April 22, 2022. The Residential Tenancy Branch forwarded the Notice of Dispute Resolution Proceeding to the Tenant via email on May 3, 2022. With the Landlord's Application already in place, the Branch joined the Tenant's Application to that of the Landlord. This was stated in the email the Branch sent to the Tenant on May 3, 2022.

That email message contains the following:

Your application for Dispute Resolution by Direct Request **has been scheduled for a participatory hearing.**

A Direct Request application can only be processed when it is uncontested. Your landlord(s) filed an application for dispute resolution and therefore, we have scheduled your applications to be heard together.

This message contains important information on how to prepare your Notice package, how to serve your Notice package(s), and how to submit evidence for your claim.

Prepare Your Notice of Dispute Resolution Proceeding Package

You must serve **separate** Notice of Dispute Resolution Proceeding packages to **[the Landlord]** within three calendar days, or no later than **May 6, 2022**.

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding
2. All evidence submitted with this application
3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114 fact sheet

Serve Your Notice of Dispute Resolution Proceeding Package to the Respondent(s)

You **must** serve the Notice of Dispute Resolution Proceeding package in one of the following ways and then provide your associated proof of service to the Residential Tenancy Branch via the [Dispute Access site](#) using your dispute access code: **[code]** or by submitting these documents at the Residential Tenancy Branch or at any Service BC Centre.

Canada Post Registered Mail

1. Prepare an envelope for each respondent
2. Include 1 copy of the Notice of Dispute Resolution package in each envelope
3. Send the package(s) by Canada Post Registered Mail - Package(s) must be post marked on or before **May 6, 2022**
4. Provide the registered mail receipt(s) and tracking information to the Residential Tenancy Branch

In person

1. Print a Notice of Dispute Resolution package for each respondent
2. Serve each respondent by hand on or before **May 6, 2022**
3. You must be able to provide proof that you have served in person

Email Service

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. You can use the [Address for Service](#) (RTB-51) form to prove that the other party agreed to receive documents by email. If the other party has not agreed to email service, you can [apply online for substituted service](#) using your dispute access code: **[code]** or submit a [paper application](#) to the Residential Tenancy Branch.

1. Prepare an Email to be sent to each respondent.
2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before **May 6, 2022**
3. Provide proof that you have an agreement with the other party to serve documents by email

Learn more about [serving your Notice of Dispute Resolution Proceeding package](#).

In the hearing, when I inquired, the Tenant did not provide sure answers on their mode of service, or the date on when they served the Landlord with their own Application for return of the security deposit. The Tenant stated they provided a photo of this mode of service; however, that did not appear in their evidence. As well, the Landlord stated they did not receive the Tenant's Notice of Dispute Resolution.

The guidelines I set out above apply to this situation with the Tenant's own Application. Without proof of service to the Landlord, and with regard to the timeline thereof, I cannot grant the Tenant a consideration of their own Application. In the hearing I advised the matter of the security deposit formed part of the consideration with the Landlord's Application; however, above I have dismissed the Landlord's Application in its entirety, so this matter of the security deposit, as yet, remains unresolved.

I dismiss the Tenant's Application in its entirety. Because of no clarity on the issue of service, I grant no reimbursement of the Application filing fee.

Conclusion

In line with the proper service provisions in this administrative tribunal setting, I dismiss the Landlord's Application for compensation, with leave to reapply. This decision does not impact any deadlines as set forth in the *Act*. I dismiss the Landlord's Application for reimbursement of the Application filing fee, without leave to reapply.

I dismiss the Tenant's Application for return of the security deposit, with leave to reapply. This decision does not impact any deadline as set forth in the *Act*. I dismiss the Tenant's Application for reimbursement of the filing fee, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: December 14, 2022

Residential Tenancy Branch