



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR FFT**

Introduction

This hearing was convened by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord, pursuant to section 65; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord's agent ("JB") and one of the two Tenants ("HL") attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Amendment of Respondent's Name

At the outset of the hearing, I noted the Application did not provide a proper legal name for the Landlord. In response, JB provided the legal name of the Landlord. HL requested that I amend the Application to correct the name of the respondent.

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

With the consent of JB, I order the Application to be amended by replacing the name of the respondent with the proper legal name of the Landlord provided by JB.

Preliminary Matter – Service of Notice of Dispute Resolution on the Landlord

HL stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence (“NDRP Package”) on the Landlord by email. JB denied the Landlord received the NDRP Package from the Tenants by email. JB stated the Landlord became aware of the Application when it received an automated email from the Residential Tenancy Branch that provided a reminder of the time and date of this hearing.

Section 59(3) and 59(6) of the Act state:

- 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.*
- 59(6) An individual occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that this Act applies to that living accommodation.

Section 59(6) of the Act does not apply to the Application made by the Tenants as they are not seeking an interim order that the Act applies to living accommodation in a residential hotel. As such, section 59(3) of the Act states the Tenants must serve the NDRP on the Landlord within 3 days of making it, or within a different period specified by the Director of the RTB. Rule 3.1 of the RoP provides clarification on the date by which the applicant must serve a notice of dispute resolution proceeding on the respondent. Rules 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*].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

[emphasis in italics added]

Based on the Rule 3.1 of the RoP, the 3-day period for service of the NDRP on the Landlord commenced on the date the NDRP was made available to the Tenants by the RTB. At the time the Tenants made the Application, they requested that the NDRP be delivered to them by email. The RTB emailed the NDRP to the Tenants on October 13, 2022, with instructions to serve the NDRP on the Landlord by October 16, 2022. The Tenants knew, or ought to have known, that emails may be redirected by their email service provider, or their email software, into a junk mail folder. As such, the Tenants should have checked their junk mail folder on a daily basis to see if any email(s) from the RTB had been redirected into their junk mail folder. Alternatively, the Tenants had the option of calling the RTB to determine the status of the processing of their Application.

Section 89 of the Act sets out the methods by which an applicant may serve a notice of dispute resolution proceeding on the respondent as follows:

- 89(1) 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]*;
- (f) by any other means of service provided for in the regulations.

Although email is not one of the methods that are permitted for service of a notice of dispute resolution proceeding set out in section 89, the Tenants made an application ("SS Application") for substituted service to allow them to serve the NDRP and their evidence on the Landlord by email. In a decision dated October 27, 2022, the adjudicator who reviewed the SS Application, issued the following order ("SS Order"):

For this reason, I allow the tenants substituted service of the Notice of Dispute Resolution Proceeding (the Notice) with supporting documents and evidence by e-mail to the e-mail address listed on the second page of this decision.

I order the tenants 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 tenants have served the landlord in accordance with this order. If possible, the tenants should provide a read receipt confirming the e-mail was opened and viewed by the Landlord.

[emphasis in italics added]

Although the SS Order allowed the Tenants to serve the NDRP and other documents on the Landlord by e-mail, the Tenants did not provide any proof of service that they e-mailed the NDRP as required by the Order. After the hearing, I reviewed every piece of evidence the Tenants submitted for the Application and I was unable to locate a copy of an email, confirmation or delivery receipt or other documentation to confirm the Tenants served the Landlord with the NDRP, supporting documents and their evidence in accordance with the SS Order. In the absence of a proof of service of the NDRP on the Landlord by email, or by another method of service permitted by section 89 of the Act, I find the Tenants have not proven, on a balance of probabilities, that the NDRP was served on the Landlord in accordance with the requirements of Rule 3.1 of the RoP. As such, I dismiss the Application in its entirety with leave to reapply.

Conclusion

The 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: December 5, 2022

Residential Tenancy Branch