



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ERP, FFT**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order for emergency repairs, pursuant to section 33.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the landlord 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. I also confirmed from the teleconference system that the landlords 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.

The tenants confirmed their email addresses for service of this decision.

Tenant J.S. testified that he served the landlord with this application for dispute resolution (the "application") via registered mail. No proof of service documents were entered into evidence. Tenant J.S. testified that he did not know on what date the application was mailed. Tenant J.S. testified that he did not know the tracking number.

Tenant A.C. testified that she thought that all she had to do was file the application. Tenant A.C. testified that she did not know she had to serve the landlord.

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 landlord was served with this application for dispute resolution in a manner required under section 89 of the *Act* as no proof of service documents, such as a registered mail receipt, were entered into evidence and the landlord did not attend this hearing.

I dismiss the tenants' application for dispute resolution with leave to reapply for failure to prove service in accordance with section 89 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*.

Conclusion

I dismiss the tenants' application with leave to reapply, for failure to prove service of the application for dispute resolution, 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: January 17, 2023

Residential Tenancy Branch