



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNC, DRI-ARI-C, RPP, OLC, FFT

Introduction

The tenants sought various relief under the *Residential Tenancy Act* (the “Act”).

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

Section 59(3) of the Act requires that a person who makes an application for dispute resolution must give a copy of the application (in the form of a Notice of Dispute Resolution Proceeding) to the other party within 3 days of making it or receiving a copy of the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch.

This requirement is mirrored in Rule 3.1 of the *Rules of Procedure*. At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that the respondent was served with the Notice of Dispute Resolution Proceeding and all evidence as required by the Act and the *Rules of Procedure*.

The landlord testified that he was never served with a copy of the Notice of Dispute Resolution Proceeding. He had to contact the Residential Tenancy Branch (on December 1, 2022) to obtain the hearing information. The tenant (A.S.) testified that she sent three separate packages—presumably with one of those packages containing the Notice of Dispute Resolution Proceeding—to the landlord by Canada Post registered mail, but two of those packages were returned. She has no information as to what happened with the third package and whether it was received by the landlord.

Conversely, the landlord—despite being aware of the hearing as far back as December 1, 2022—did not submit any documentary evidence until January 12, 2022, which is an unreasonable delay in serving evidence (see Rule 3.11 of the *Rules*).

Based on these facts I am unable to find that service of the Notice of Dispute Resolution Proceeding was properly executed in compliance with the Act and the *Rules of Procedure*. As such, I am likely unable to consider the merits of the applicants’ application or the notice to end tenancy, including any findings as to jurisdiction.

Conclusion

The application is hereby dismissed *with* leave to reapply.

I make no findings regarding jurisdiction in this decision.

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

Dated: January 24, 2023

Residential Tenancy Branch