



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51. The above application for dispute resolution was filed on April 26, 2022.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was 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 tenant and I were the only ones who had called into this teleconference.

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

The tenant confirmed their email address for service of this decision.

Preliminary Issue- Service

The tenant testified that the landlord was served with this application for dispute resolution on December 22, 2022 via registered mail. The tenant provided the

registered mail tracking number in the hearing, which is located on the cover page of this decision.

The tenant testified that as of 12:30 p.m. on January 9, 2023 (the date of this hearing), the landlord had not picked up the registered mail package.

The tenant testified that he served this application for dispute resolution late because he had thought he served earlier but had not. The tenant testified that on December 19, 2022 he received an e-mail from the Residential Tenancy Branch and when he checked his notes, he found that he had not served the landlord and this led him to serve the landlord on December 22, 2022.

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].

The Notice of Dispute Resolution Proceeding Package was made available by the Residential Tenancy Branch on May 9, 2022.

I find that the tenant failed to serve the landlord with the tenant’s application for dispute resolution in accordance with Rule 3.1 as the tenant’s application for dispute resolution was not served on the landlord within three days of May 9, 2022. Furthermore, if the

tenant served the landlord on December 22, 2022 via registered mail, pursuant to section 90 of the *Act*, the landlord would not be deemed to have received it until December 27, 2022, only 12 clear days before this hearing.

I find that to proceed with the tenant's application would seriously prejudice the landlord who was not provided with an adequate time to review and respond to the tenant's application for dispute resolution.

Given the extremely late service, I find that it would be procedurally unfair to the landlord to hear the tenant's application for dispute resolution. For failure to serve in accordance with Rule 3.1, I dismiss the tenant's application with leave to reapply.

Conclusion

The tenant's application is dismissed with leave to reapply for failure to serve in accordance with Rule 3.1.

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 09, 2023

Residential Tenancy Branch