



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC FFT**

Introduction

This hearing was reconvened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act"). The Tenants applied for:

- compensation from the Landlords related to a Notice to End Tenancy for the Landlord's Use of Property dated September 14, 2021 ("1 Month Notice") pursuant to section 51(2) of the Act; and
- authorization to recover the filing fee for the Application from the Landlords pursuant to section 72.

The original hearing of the Application was held on December 15, 2022 ("Original Hearing"). One of the two Landlords ("LB") and one of the two Tenants ("TE") attended the Original 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.

There was insufficient time for the parties to present their testimony and rebuttals at the Original Hearing. As such, I adjourned the Original Hearing and issued a decision dated January 1, 2022 ("Interim Decision") pursuant to Rule 7.8 of the RoP. In the Interim Decision, I ordered the Tenants to re-reserve their evidence on the Landlords and for the Landlords to serve any evidence, and submit to the Residential Tenancy Branch ("RTB"), any evidence they thought was relevant to respond to the Tenants' evidence. The Interim Decision and Notices of Dispute Resolution for the adjourned hearing, scheduled for January 30, 2023 ("Adjourned Hearing"), were served on the parties by the RTB.

The Tenants did not attend the Adjourned Hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:12 am, in order to enable the Tenants to call into this teleconference hearing. LB and the other Landlord ("SW") attended the Adjourned hearing and they 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 were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that LB, SW and I were the only ones who had called into this teleconference.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding

TE stated the Tenants went to the rental unit and were told by an occupant that they were unaware of who the Landlords were. TE stated one of the occupants of a rental unit at the residential property provided the Tenants with a copy of a tenancy agreement for a tenancy that commenced on January 1, 2022 with a landlord other than the Landlords. TE stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") on each of the Landlords by registered mail using the address that was provided for the purchasers in the 2 Month Notice. LB stated the Landlords received a registered mail package from the Tenants but the Notice of Dispute Resolution Proceeding and the Tenants' supporting documents were missing.

TE provided the Canada Post tracking number for service on SW but could not find the tracking number for service on SW. However, TE stated the NDRP Package addressed to SW was returned by Canada Post. Based on the conflicting testimony of TE and LT, I am unable to determine whether the contents of the NDRP Package were received by the Landlords. However, LB stated the Landlords called the RTB and obtained a courtesy copy of the NDRP. As such, I find the Landlords were sufficiently served with the NDRP pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Late Service of Evidence by Landlords

As noted above, in the Interim Decision I ordered the Tenants to re-reserve their evidence on the Landlords. At the Adjourned Hearing, the Landlords stated they did not receive any evidence from the Tenants.

Preliminary Matter – Late Service of Evidence by Landlords

LB stated the Landlords served their evidence for this proceeding on the Tenants by registered mail on December 5, 2022. LB provided the Canada Post tracking number for service of the Landlords' evidence on the Tenants. Pursuant to section 90 of the Act, the Tenants were deemed to have received the Landlords' evidence on December 10, 2022. However, the Canada Post tracking website indicates the Tenants received the registered mail package on December 7, 2022. As such, I find the Tenant's received the registered mail package from the Landlords on December 7, 2022.

Rule 3.15 of the RoP states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch *not less than seven days before the hearing*.

See also Rules 3.7 and 3.10.

[emphasis in italics added]

The RoP defines "Days" as follows:

Days

- a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not

- open during regular business hours, the time is extended to the next day that the office is open.
- c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, *the first and last days must be excluded*.
 - d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

[emphasis in italics added]

After deducting the first and last days, I find the Landlord's evidence was not served at least 7 days before the hearing. As such, I find the Landlords did not comply with the requirements of Rule 3.15 of the RoP. However, as noted below, I permitted the Landlords to serve the Tenants with any evidence they thought was relevant to respond to the evidence to be re-served on them by the Tenants in accordance with the orders set out in the Interim Decision.

Preliminary Matter – Effect of Non-Attended by Tenants at Hearing

Rules 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenants did not attend the Adjourned Hearing before it ended at 11:12 am, being more than 10 minutes after of its commencement at 11:00 am, the Application is dismissed without leave to reapply.

Conclusion

The Application is dismissed without 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: January 30, 2023

Residential Tenancy Branch