



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMOS FERGUSON MEMORIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RP**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for An order for repairs to be made to the unit, site or property pursuant to section 32.

The landlord did not attend the hearing. The tenant attended the hearing and was accompanied by her daughter, JE. As the landlord did not attend, I asked the tenant whether the landlord was served with the Notice of Dispute Resolution Proceedings package.

The tenant’s daughter testified that she recollects that the Notice of Dispute Resolution Proceedings package was served via registered mail but does not recall the date. The tenant’s daughter spent 25 minutes trying to locate the tracking number for the mailing but was ultimately unsuccessful.

Analysis

The Residential Tenancy Branch Rules of Procedure 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].

3.5 Proof of service required at the dispute resolution hearing

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 of the Act establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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.

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the Act. (Excerpt reprinted below)

PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that

the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report. **Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.**

The principles of natural justice and procedural fairness require that the landlord has been put on sufficient notice of the claim against them and that they have had adequate time and opportunity to respond to the application. Based on the tenant's lack of evidence regarding service, I am not satisfied that the landlord was properly served with the documents within 3 days, as set out in Rule 3.1 of the Residential Tenancy Branch Rules of Procedure. As such, I dismiss the tenant's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the Act.

Conclusion

This 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: January 23, 2023

Residential Tenancy Branch