



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$791.25 for damage to the rental unit, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:43 p.m. I monitored the teleconference line throughout this hearing. 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 landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name and spelling. She provided her email address for me to send this decision to the landlord after the hearing.

The landlord's agent confirmed that she was the property portfolio manager for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She said that the landlord owns the rental unit. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure (“Rules”)* does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord’s agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord’s agent. I informed her that I could not provide legal advice to her. She had an opportunity to ask questions. She did not make any adjournment or accommodation requests.

Preliminary Issue – Inappropriate Behaviour by the Landlord’s Agent during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

During this hearing, the landlord’s agent interrupted me and spoke at the same time as me. I cautioned her about this behaviour and asked her to allow me to finish speaking. She became upset when I asked her questions about service of the landlord’s application and about this tenancy. I informed her that I had to ask questions about service and this tenancy, in order to make a decision about the landlord’s application.

The landlord’s agent repeatedly told me that the landlord submitted documents for this hearing, and to check them, when I asked her questions about service and this tenancy. She told me to check a receipt for registered mail, which was not provided by the landlord for this hearing. She also told me to check the written tenancy agreement, which the landlord submitted for this hearing, when I asked her questions about this tenancy. I informed her that I had to ask her questions to obtain and confirm information, which is why a participatory hearing was scheduled, with the landlord participating as a party in this hearing, rather than a hearing based on documents only, where a participatory hearing is not required (ex-parte, direct request applications).

I asked the landlord’s agent if she wanted to continue with this hearing and answer my questions, and she confirmed that she did.

Preliminary Issue – Service of Landlord’s Application

The landlord’s agent stated that the tenant was served with a copy of the landlord’s application for dispute resolution hearing package on May 12, 2022, by way of registered mail. She provided a Canada Post tracking number verbally during the hearing. She claimed that a copy of the Canada Post receipt was submitted for this hearing, but when I told her I did not receive it at the RTB, and asked her the name of the document that was uploaded to the online RTB dispute access site, she said that she did not know.

The landlord’s agent stated that she obtained a forwarding address for the tenant on March 9, 2022, from government income assistance. The landlord provided a copy of the email. The landlord’s agent stated that the tenant did not attend a move-out condition inspection or provide a forwarding address to the landlord when she vacated the rental unit on April 9, 2021.

The landlord was provided with an application package from the RTB, including instructions regarding the hearing process. The landlord was provided with a document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*

- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*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.*

Accordingly, I find that the tenant was not served with the landlord's application, as per section 89 of the *Act*.

I find that the landlord was unable to provide sufficient documentary evidence of a forwarding address provided by the tenant, as required by section 89(1)(d) of the *Act*. The landlord obtained an address from a government income assistance agency, not the tenant. The tenant did not provide a forwarding address to the landlord when she vacated the rental unit. The landlord's email of March 9, 2022, is almost one year after

the tenancy ended on April 9, 2022. I also find that the landlord failed to provide sufficient evidence of a residential address of the tenant.

The landlord did not provide a Canada Post receipt with this application, as required by Residential Tenancy Policy Guideline 12. I checked the Canada Post website using the tracking number that the landlord's agent provided during this hearing, and it states that the mail was returned to sender. The tenant did not attend this hearing to confirm service of the landlord's application.

At the outset of this hearing, I notified the landlord's agent that if I found that the tenant was not served with the landlord's application, it would be dismissed with leave to reapply, except for the filing fee. She affirmed her understanding of same.

The landlord's application is dismissed with leave to reapply, except for the \$100.00 filing fee, which is dismissed without leave to reapply.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's 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 16, 2023

Residential Tenancy Branch