



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing dealt with the landlords' application, filed on June 19, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, 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 8 minutes. The two landlords, landlord AA ("landlord") and "landlord MA," attended the hearing and were each 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 1:38 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 two landlords and I were the only people who called into this hearing.

The landlord confirmed the names and spelling for him and landlord MA. The landlord provided his mailing address for me to send this decision to both landlords after the hearing.

The landlord provided the rental unit address. He identified himself as the primary speaker for both landlords at this hearing.

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, both landlords separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both landlords. I informed them that I could not provide legal advice to them, and they could hire a lawyer for same. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlords’ Application

The landlord testified that he personally served the tenant with a copy of the landlords’ application for dispute resolution hearing package on June 10, 2022, June 11, 2022, July 6, 2022, or July 7, 2022. He said that he could not recall the exact date of service. He stated that his niece witnessed this service. He confirmed that his niece did not provide a witness statement, as evidence for this hearing. He claimed that he does not know where his niece is living.

Section 59(3) of the *Act* states the following:

Starting Proceedings

59 (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Rule 3.1 of the RTB *Rules* states, in part:

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].*

The landlords were provided with an application package from the RTB, including instructions regarding the hearing process. The landlords were provided with a document entitled “Notice of Dispute Resolution Proceeding,” dated July 7, 2022 (“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 states the following (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];*
- (f) by any other means of service provided for in the regulations.*

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

15. 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.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply...

According to the online RTB dispute access site, the landlords were sent an email by the RTB on July 7, 2022, to serve the tenant with their application by July 10, 2022.

I find that the landlords failed to provide sufficient documentary and testimonial evidence to prove that the tenant was personally served with the landlords' application

for dispute resolution hearing package, as required by sections 59 and 89 of the *Act*, Residential Tenancy Policy Guideline 12, Rule 3.1 of the *RTB Rules*, and the NODRP.

I informed the landlords that they did not provide sufficient evidence, including the exact date of service, a witness statement, or witness testimony, to prove service. Three of the above service dates provided by the landlord, of June 10, 2022, June 11, 2022, and July 6, 2022, pre-date the NODRP, which is dated July 7, 2022, and the email sent by the RTB with the NODRP, on July 7, 2022. The tenant did not appear at this hearing to confirm receipt of the above documents.

The landlords filed this application on June 19, 2022, they were sent the NODRP by the RTB on July 7, 2022, they claimed that they served the tenant sometime in June or July 2022, and this hearing occurred on March 13, 2022. The landlords had almost 9 months after they filed this application, to provide sufficient proof of service, and failed to do so.

I informed the landlords that their application was dismissed with leave to reapply, except for the \$100.00 filing fee, which was dismissed without leave to reapply. I notified them that they could file a new application and pay a new filing fee, if they want to pursue this matter in the future. They affirmed their understanding of same.

Conclusion

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

The remainder of the landlords' 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: March 13, 2023

Residential Tenancy Branch