



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes LAT, OLC, FFT

Introduction

This hearing dealt with the tenants' application, filed on October 31, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to change the locks to the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with 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 landlord did not attend this hearing, which lasted approximately 11 minutes. The two tenants, tenant TS ("tenant") and "tenant MW," 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 11:00 a.m. and ended at 11:11 a.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 tenants and I were the only people who called into this teleconference.

The two tenants confirmed each of their names and spelling. The tenant provided the name and spelling for the landlord. The tenant provided her email address for me to send this decision to both tenants after the hearing.

The tenant provided the rental unit address. She identified herself as the primary speaker for both tenants 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 tenants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both tenants. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Tenants’ Application

The tenant testified that the landlord was served with a copy of the tenants’ application for dispute resolution hearing package on November 18, 2022, by way of email. She did not provide the email address for service. She did not indicate how or when the landlord confirmed that she accepted service by email, from the tenants. She said that the tenants did not provide a copy of the email as proof of service, since no one told them to do so.

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 tenants were provided with an application package from the RTB, including instructions regarding the hearing process. The tenants confirmed that they were provided with a document entitled “Notice of Dispute Resolution Proceeding,” dated November 15, 2022 (“NODRP”) from the RTB, after filing this application, and they had it in front of them during this hearing. They agreed that the NODRP contains the phone number and access code to call into this hearing.

The tenants agreed that the NODRP states the following at the top of page 2, in part (my emphasis added, and this part was read aloud by me during this hearing):

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.**

Section 43(2) of the *Regulation* states the following (my emphasis added):

*(2) For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by **emailing a copy to an email address provided as an address for service by the person.***

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

5. SERVICE OF DOCUMENTS GENERALLY

- *by any other means of service prescribed in the regulations*

*The Regulation to the Residential Tenancy Act and the Manufactured Home Park Tenancy Act prescribes service to an email address provided for service as an acceptable method of serving documents. Documents may be served by sending a copy of the document to the email address provided as an address for service by the person to be served. If no email address for service has been provided, then this method of service should not be used. **Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.***

If service by email is used, the person serving the document will need to provide proof that the document sent by email was sent to the email address provided by the other party. Satisfactory proof may include a print out or screen shot of:

- RTB 51 – Address for Service or other document that sets out the party's email address for service;

- **the sent item, including the email address the item was sent to;**
- **a confirmation of delivery receipt;**
- **a response to the email by the party served;**
- **a read receipt confirming the email was opened, or**
- **other documentation to confirm the party has been served.**

According to the online RTB dispute access site, the tenants were sent an email by the RTB on November 15, 2022, to serve the landlords with their application by November 18, 2022.

I find that the tenants failed to provide sufficient documentary or testimonial evidence that the landlord was served with the tenants' application for dispute resolution hearing package by email, as required by sections 59 and 89 of the *Act*, section 43 of the *Regulation*, Residential Tenancy Policy Guideline 12, Rule 3.1 of the *RTB Rules*, and the NODRP.

I informed the tenants that they did not provide sufficient documentary evidence, including the email, to prove service, with this application. I notified them that they did provide the email address that the documents were sent to, or proof that the landlord accepted service by email. I notified them that the landlord did not appear at this hearing to confirm receipt of the above documents.

The tenants claimed that they could send the email proof of service after this hearing. I notified them that I would not permit same, as they had ample time prior to this hearing. The tenants filed this application on October 31, 2022, they were sent the NODRP by the RTB on November 15, 2022, they claimed that they served the landlord on November 18, 2022, and this hearing occurred on March 13, 2022.

I informed the tenants 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 confirmed their understanding of same.

Conclusion

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

The remainder of the tenants' 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