



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, RP, AAT, PSF

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order for the landlord to allow the tenant or his guests to access the rental unit, pursuant to sections 30 and 70; and
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62.

I left the teleconference connection open until 9:41 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M. The landlord did not attend the hearing. Tenant HJ (the tenant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness FB also attended. 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 tenant, her witness and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The tenant affirmed that she provided the landlord's address for her advocate and the advocate registered mail the notice of hearing to the landlord. The tenant does not know the tracking number or when the advocate mailed the package.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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].

Rule of Procedure 3.5 states:

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.

Residential Tenancy Branch Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Based on the tenant's vague testimony, I find the tenant failed to prove, on a balance of probabilities, that the landlord was served the notice of hearing. I find the tenant did not serve the notice of hearing in accordance with section 89(1) of the Act.

Rule of Procedure 3.1 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].

As the tenant did not serve the notice of hearing in accordance with section 89(1) of the Act, I dismiss the application with leave to reapply.

Leave to reapply is not an extension of timeline to apply.

Conclusion

I dismiss the application 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 16, 2023

Residential Tenancy Branch