



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application, filed on July 6, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$3,600.00 for compensation for damage or loss under the *Act*, *Residential Tenancy 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 and "tenant LA" did not attend this hearing. Tenant JA ("tenant") attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 10 minutes, from 1:30 p.m. to 1:40 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference.

The tenant confirmed the names and spelling for him, tenant LA, and the landlord. The tenant provided his mailing address for me to send this decision to both tenants after this hearing.

The tenant confirmed that he had permission to represent tenant LA, who he said is his wife, at this hearing (collectively "tenants"). He 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 tenant affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the tenant. I informed him that I could not provide legal advice to him. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Tenants’ Application

During this hearing, I provided the tenant with ample and additional time to look up service evidence and information. He said that he had to find the registered mail information, including the Canada Post receipt and tracking number.

The tenant testified that the landlord was served with a copy of the tenants’ application for dispute resolution hearing package, by registered mail. He claimed that the tenants received it from the RTB on July 20, 2022. He stated that the landlord received it on July 26, 2022. He said that he did not have a copy of the Canada Post mail receipt with the date of service that it was mailed to the landlord. He provided a Canada Post tracking number verbally during this hearing.

As per the online RTB dispute access site, the tenants were emailed an application package from the RTB, including instructions regarding the hearing process. The tenants were sent a document entitled “Notice of Dispute Resolution Proceeding,” dated July 20, 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 package was sent to the tenants by email on July 20, 2022, with instructions to serve the landlord by July 23, 2022. That email provides instructions regarding service to the landlord, methods of service, and proof of service.

As per the online RTB dispute access site, the tenant called the RTB on July 21, 2022, and was informed about the NODRP package service procedure, by an RTB information officer.

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

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 (my emphasis added):

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 were provided with an NODRP document, dated July 20, 2022, which 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, which I informed the tenant about 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 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 landlord was not served with the tenants' application, as per section 89 of the *Act*.

The tenant provided two different dates of July 20, 2022 and July 26, 2022, which he said are not the dates of service. July 26, 2022, is not within 3 days of July 20, 2022. The tenant did not provide a date of service.

The tenant did not have a copy of the Canada Post receipt in front of him during this hearing. The landlord did not attend this hearing to confirm receipt of the tenants' application.

The tenants provided a Canada Post receipt and delivery confirmation with their application. They did not provide a Canada Post tracking report. There is no name or address on the receipt, indicating it was sent to the landlord at the landlord's address.

When I looked up the tracking number provided by the tenant, on the Canada Post website, it indicated that the mail was sent out on July 22, 2022. The tenant did not provide or confirm this date of service, during this hearing.

The tenants filed this application on July 6, 2022, and this hearing occurred on March 28, 2023, over 8.5 months later. The tenants had ample time to serve the landlord, gather their own documents, and provide evidence of service.

The tenants contacted the RTB for information regarding service on July 21, 2022, the day after the application documents were provided to them by the RTB on July 20, 2022.

I notified the tenant that the tenants' application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed him that the tenants were at liberty to file a new application and pay a new filing fee, if they want to pursue this matter in the future. He affirmed his 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 28, 2023

Residential Tenancy Branch