



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlords CL and NL appeared. Tenant GT appeared with witness JF. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

Preliminary Issue

The landlord CL named on the tenant’s application appeared along with NL who stated he was also a landlord. The tenant did not object. Pursuant to section 64(3)(c) the style of cause is amended to add the additional landlord.

Service

The landlord acknowledged service of the tenant's dispute notice and materials but alleged that service was late. The tenant testified that she delivered the dispute notice and supporting evidence personally to the landlord's mailbox on February 22, 2023. The dispute notice is dated November 30, 2022.

With respect to service, RTB Rules of Procedure state 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*].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In this instance, not only were the dispute notice and evidence not served within three days of the dispute notice being made available to the applicant, but the dispute notice and documents were served on the landlord 12 days prior to the hearing. The Rules of Procedure clearly state that evidence must be served 14 days prior to the hearing. Further, the tenant has not provided any proof of service of the documents in evidence.

RTB Rules of procedure 10.9 states:

10.9 Proof of Service

An applicant must provide proof of service by submitting RTB 9 Proof of Service – Notice of a Dispute Resolution form one day after serving the Notice of Dispute

Resolution Proceeding Package and at least two days before the hearing. Failure to do this may result in the application being dismissed or the hearing being rescheduled or adjourned to a later date.

I find that the landlords were not properly served with the tenant's dispute notice and evidence and therefore the tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed.

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 24, 2023

Residential Tenancy Branch