



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ARI-C

Introduction

A previous prehearing conference was held before me on December 15, 2022, at 9:30 am and I issued a previous interim decision on December 16, 2022. I will not repeat the matters covered in that interim decision. As a result, it must be read in conjunction with this interim decision.

The prehearing conference was reconvened before me on April 24, 2023, at 9:30 am to determine if the Landlord had properly affected service of the Notice of Dispute Resolution Proceeding (NODRP) on all respondents, except for those who appeared at the original prehearing conference and accepted service, as ordered by me in the interim decision on December 16, 2022. It was also reconvened to determine if:

- the Landlord had amended the monetary amount as allowable;
- there were any further preliminary matters to be addressed;
- any of the respondents wished to compel the Landlord to produce documents;
- and
- to hear arguments on whether the hearing on the substantive matters should be conducted in writing or via teleconference.

The participants were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another, and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal recordings of the proceeding were prohibited under the Residential Tenancy Branch Rules of Procedure (Rules of Procedure) and confirmed that they were not recording the proceedings.

I stated at the hearing that a teleconference regarding the substantive matters would be scheduled. Upon further consideration, I find this unnecessary as I have dismissed the Application with leave to reapply for the following reasons. At the original prehearing teleconference I determined that the Landlord had not served any of the respondents

with the NODRP in compliance with section 89(1) of the Act and the Rules of Procedure and Residential Tenancy Policy Guidelines (Policy Guidelines) in place at that time, even though three respondents appeared and did not take issue at that time with the Landlord's failure to properly serve them. I provided the Landlord with a second opportunity to properly affect service in accordance with section 89(1) of the Act, the Rules of Procedure, and the Policy Guidelines by adjourning the matter. In my interim decision I made clear orders regarding how and when service was to be affected and the proof of service documents required to be submitted for my review. At the reconvened prehearing teleconference the Agents again failed to satisfy me that they had properly served the respondents in accordance with:

- my orders;
- section 89(1) of the Act; and
- the Rules of Procedure and Policy Guidelines in place at the time my interim decision was issued.

Although the Agents argued that they were entitled to serve the NODRP by posting it to the rental unit doors, contrary to the service orders set out in my interim decision and section 89(1) of the Act, I disagree. First, I find that the Landlord was required to comply with my orders regarding the service of the NODRP regardless of any changes to the Rules of Procedure or Policy Guidelines that came into effect after my interim decision was issued. Second, Policy Guideline 37C, which allows landlords to serve the application for an additional rent increase for capital expenditures by attaching a copy to the door or other conspicuous place at the address at which the tenant resides, did not take effect until February 17, 2023. This is more than two months after my interim decision and orders were issued, well past the deadline set in my interim decision and orders for service of the NODRP on the respondents, and almost six months after the date they were originally to have served the NODRP. As a result, I find that they were not entitled to rely upon it for service of the NODRP for this Application.

Further to the above, one of the respondents who attended both preliminary hearings, RM, took issue with providing the Landlord with any further opportunities to prove or affect service of the NODRP, as the Landlord and their Agents had already had two opportunities to do so, and had failed to properly serve or prove service on both occasions.

As a result of the above, and because I find that it would be administratively unfair and significantly prejudicial to the respondents, I therefore dismiss the Application with leave to reapply because it was not properly served. This is not an extension of any statutory time limit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 26, 2023

Residential Tenancy Branch