



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTAL
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on August 19, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$1,410.32 for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$670.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two tenants did not attend this hearing. The landlord's agent 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 8 minutes, from 1:30 p.m. to 1:38 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 landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name and spelling. She provided her email address for me to send this decision to the landlord after this hearing.

The landlord's agent said that she had permission to represent the landlord company ("landlord") named in this application. She said that she is employed by the landlord as a resident manager. She provided the legal name of the landlord. She 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 landlord’s agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord’s agent. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlord’s Application

The landlord’s agent testified that the landlord did not serve the tenants with the landlord’s application for dispute resolution hearing package. She said that the landlord does not have the tenants’ address for service. She claimed that she spoke to the tenants over the phone, but they later disconnected their phone number.

As per the RTB online dispute access site, the landlord was emailed an application package from the RTB, including instructions regarding the hearing process. The landlord was sent a document entitled “Notice of Dispute Resolution Proceeding,” dated September 7, 2022 (“NODRP”) from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing.

The landlord was sent the NODRP package on September 7, 2022, with explicit instructions to serve the tenants by September 10, 2022. That email provides instructions regarding service to the tenants, methods of service, and proof of service.

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 NODRP states the following at the top of page 2, in part (my emphasis added, which I informed the landlord's agent 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].***

Accordingly, I find that the landlord failed to provide sufficient evidence that the tenants were served with the landlord's application, as per sections 59 and 89 of the *Act*, Rule 3.1 of the *RTB Rules*, and the NODRP.

The landlord's agent testified that the tenants were not served with the landlord's application at all. The tenants did not attend this hearing to confirm service of the landlord's application.

The landlord filed this application on August 19, 2022, and this hearing occurred on May 15, 2023, over 9 months later. The landlord had ample time to serve the tenants, provide evidence of service, and confirm service during this hearing.

I notified the landlord's agent that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed her that the landlord could file a new application and pay a new filing fee, if it wants to pursue this matter in the future. She affirmed her understanding of same.

Conclusion

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

The remainder of the landlord's 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: May 15, 2023

Residential Tenancy Branch