



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REDBRICK PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the landlord's application, filed on January 8, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- an additional rent increase for capital expenditures of \$22,979.25 total, pursuant to section 43 of the *Act* and section 23.1 of the *Residential Tenancy Regulation* ("Regulation").

The landlord's agent and 1 of 26 tenants, "tenant CR," attended this hearing and were each 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 11:00 a.m. to 11:10 a.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, tenant CR, and I were the only people who called into this teleconference.

The landlord's agent and tenant CR confirmed their names and spelling. They both provided their email addresses for me to send this decision to them after this hearing.

The landlord's agent stated that he is the CEO for the landlord company ("landlord") named in this application. He said that he had permission to represent the landlord. He provided the rental property 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 and tenant CR both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord's agent and tenant CR. They had an opportunity to ask questions, which I answered. Neither party made any accommodation requests. Tenant CR did not make an adjournment request.

Preliminary Issue – Service of Landlord's Application

During this hearing, I provided the landlord's agent with ample and additional time to look up service evidence and information. He said that he was logging online to the RTB online dispute access site to find registered mail information, including Canada Post receipts and tracking numbers.

The landlord's agent testified that all tenants were served with the landlord's application for dispute resolution hearing package on January 18, 2023, all by way of registered mail. The landlord did not provide any Canada Post receipts with tracking numbers or tracking reports as documentary evidence with this application.

The landlord's agent said that he thought he provided the above documents as evidence for this hearing, but he could not locate the names of the documents, or where or when it was uploaded to the RTB online dispute access site. He said that he only had the tracking numbers in front of him and he could only provide verbal information. Given the large number of 26 tenants, I notified him that I would not accept verbal evidence regarding service, and that I required documentary evidence to confirm same.

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 documents entitled "Notice of Dispute Resolution Proceeding," dated January 17, 2023 ("NODRP") for all tenants, 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 January 17, 2023, with explicit instructions to serve all tenants by January 20, 2023. 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):

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 failed to provide sufficient evidence that all tenants were served with the landlord's application, as per sections 59 and 89 of the Act, Rule 3.1 of the RTB Rules, Residential Tenancy Policy Guideline 12, and the NODRP.

The landlord did not provide Canada Post registered mail receipts, tracking numbers, or tracking reports with its application, to confirm service to all tenants, as per Residential

Tenancy Policy Guideline 12. 25 of 26 tenants did not attend this hearing to confirm service of the landlord's application.

Only 1 tenant, tenant CR, confirmed receipt of the landlord's application. However, the landlord has filed this monetary claim against 26 tenants, and must prove service to all 26 tenants, since this total monetary claim affects all tenants.

I informed the landlord's agent that the landlord filed this application on January 8, 2023, and this hearing occurred on May 9, 2023, over 4 months later. I notified him that the landlord had ample time to serve the tenants and provide evidence of service. The landlord's agent was provided with ample and additional time of 10 minutes during this hearing, to locate the above documents and refer me to them on the RTB online dispute access site, but failed to do so.

I notified the landlord's agent that the landlord's application was dismissed with leave to reapply. I informed him that the landlord is at liberty to file a new application, if it wants to pursue this matter in the future. He affirmed his understanding of same.

Preliminary Issue – Landlord's Adjournment Request

The landlord's agent asked if this hearing could be adjourned, so he could submit service information, including Canada Post receipts and tracking numbers. Tenant CR did not respond to same.

I informed both parties that I would not grant an adjournment of the landlord's application. I made this decision after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I find that an adjournment would not likely result in an efficient or expeditious resolution of the landlord's application. The landlord's agent stated that he did not resolve this application with the tenants, prior to this hearing.

I find that the need for an adjournment arises out of the intentional actions or neglect of the landlord. I informed the landlord's agent that the landlord had ample time to provide the above evidence prior to this hearing, since this application was filed on January 8, 2023, over 4 months prior to this hearing on May 9, 2023. I find that an adjournment of the landlord's application would prejudice the tenants.

Conclusion

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 09, 2023

Residential Tenancy Branch