



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding KELSON GROUP PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants TM and JS attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of Notice of Dispute Resolution Hearing

As only the tenants attended the hearing, I asked the tenants to confirm that they had served the landlord with the Notice of Dispute Resolution Proceeding. The tenant TM testified that he is unsure whether he provided the Notice of Dispute Resolution Hearing package to the landlord. He may have sent an email, but he cannot confirm it. He posted copies of evidence to the door of the manager's office where the rental unit is located but not the Notice of Dispute Resolution Hearing.

Rule 3.1 and 3.5 of the Residential Tenancy Branch Rules of Procedure state:

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].

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

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 document]...*

The tenants testified that they are unsure about whether they served the landlord with the Notice of Dispute Resolution Proceedings package via email as required under section 89 of the Act. No other means of service were described by the tenants at the hearing and the tenants could not provide any proof of service to me, as required under Rule 3.5. Consequently, I dismiss the tenants' application seeking to cancel the landlord's notice to end tenancy with leave to reapply.

Conclusion

The application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution beyond the timelines established under section 47(4) of the *Act*.

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