



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNEVC, FFT

Introduction

This hearing dealt with the tenant's application, filed on August 29, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$20,940.00 for compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), and the landlord has not complied with the Act or used the rental unit for the stated purpose, pursuant to section 51;
- a monetary order of \$1,745.00 for compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term, pursuant to section 51.1;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord did not attend this hearing. The tenant 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 9 minutes, from 1:30 p.m. to 1:39 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 online teleconference system that the tenant and I were the only people who called into this teleconference.

The tenant confirmed her name and spelling. She provided her email address for me to send this decision to her after this hearing.

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 tenant affirmed, under oath, that she would not record this hearing.

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

Preliminary Issue – Service of Tenant’s Application

During this hearing, I provided tenant with ample and additional time to look up service evidence and information. She said that she was trying to find the registered mail information, including the Canada Post receipt, tracking number, and date.

The tenant testified that the landlord was served with the tenant’s application for dispute resolution hearing package on July 15, 2022. She said she could not find the Canada Post registered mail receipt or tracking number during this hearing because the information was at her home, and she was calling from work. She claimed that no one told her that she had to provide service evidence during this hearing, and she does not know what that means.

As per the RTB online dispute access site, the tenant was emailed an application package from the RTB, including instructions regarding the hearing process. She was sent a document entitled “Notice of Dispute Resolution Proceeding,” dated September 14, 2022 (“NODRP”) from the RTB, after filing this application. The NODRP contains the phone number and access code to call into this hearing. The tenant was sent the NODRP package with explicit instructions to serve the landlord within 3 days, by September 17, 2022. That email provides instructions regarding service to the landlord, methods of service, and proof of service.

The tenant initially stated that she did not receive the NODRP, she only got the phone number and access code from an RTB reminder email sent to her. When I asked how she served the landlord with the NODRP if she did not receive it, she repeated that she served it to the landlord.

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 tenant 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].*

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 tenant failed to provide sufficient evidence that the landlord was served with the tenant'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 tenant provided a service date of July 15, 2022, which is prior to her application being filed on August 29, 2022. It is also prior to the NODRP date of September 14,

2022 and prior to the NODRP application package being sent to the tenant by the RTB on September 14, 2022. The tenant did not provide a Canada Post registered mail tracking number verbally during this hearing, to confirm service to the landlord, as per Residential Tenancy Policy Guideline 12. The landlord did not attend this hearing to confirm service of the tenant's application.

I informed the tenant that she filed this application on August 29, 2023, and this hearing occurred on May 23, 2023, almost 9 months later. I notified her that she had ample time to serve the landlord, provide evidence of service, and confirm service during this hearing. The tenant was provided with ample and additional time of 9 minutes during this hearing, to locate and provide the correct date and the Canada Post registered mail tracking number verbally, but failed to do so.

I notified the tenant that her application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed her that she was at liberty to file a new application and pay a new filing fee, if she wants to pursue this matter in the future. She became upset when I provided my decision to her. I notified her that I answered her questions during this hearing. I informed her that she could have contacted a lawyer for legal advice or an information officer for information, prior to this hearing.

Conclusion

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

The remainder of the tenant'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 23, 2023

Residential Tenancy Branch