



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ERP

Introduction

The Tenant filed an Application for Dispute Resolution on May 10, 2023 seeking an order that the Landlord make an emergency repair to the rental unit. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 30, 2023.

Preliminary Matter – Tenant’s Notice of Dispute Resolution Proceeding and evidence

The Notice of Dispute Resolution Proceeding generated at the Residential Tenancy Branch on May 11, 2023 specifies that the Tenant was required to give proof that they served it to the Landlord, as well as copies of all supporting documents.

The Notice of Dispute Resolution Proceeding was sent to the Tenant on May 11, 2023, with instructions on how to serve the Landlord. This message via email stated: “You must print and prepare separate Notice of Dispute Resolution Proceeding packages to [the Landlord] within one calendar day, or not later than May 12, 2023.” This package must include all evidence submitted with the Application.

In the hearing, the Tenant stated they didn’t realize everything had to be served to the Landlord. The Landlord confirmed they did not receive notice of this hearing directly from the Tenant. They received a courtesy copy from the Residential Tenancy Branch on May 16, 2023. The Landlord stated they did not receive a copy of the Tenant’s evidence.

The Landlord served their evidence for this hearing to the Tenant separately, on May 24, 2023. The Tenant confirmed this in the hearing.

The *Residential Tenancy Branch Rules of Procedures*, Rule 10.3, provides the rules on serving the application and hearing information. This is to ensure the objective of a fair, efficient, and consistent process for resolving disputes. Rule 10.3 sets the timeline of initial service after an application:

The applicant must, **within one day** 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:

- the Notice of Dispute Resolution Proceeding . . .
- the Respondent Instructions for Dispute Resolution;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person

Additionally, a Director's Standing Order regarding timelines for service was sent to the Tenant on May 11, 2023. This sets strict timelines and methods for service of the Notice of Dispute Resolution Proceeding and evidence to the other party.

I conclude the Tenant did not serve the Notice of Dispute Resolution Proceeding to notify the Landlord of the May 30 hearing. The Tenant confirmed this in the hearing.

For this reason, I dismiss the Tenant's Application in its entirety, without leave to reapply.

Preliminary Matter – repairs completed

On their Application, the Tenant presented the issue succinctly:

Our ceiling above the bathtub has been falling since we moved in and I requested it be fixed almost 2 months ago. Landlord had agreed to allow us to fix it and then went back on his word and hasn't had it dealt with. Now the ceiling has fallen and there's visible mold in the old insulation and wood. My 15yr old has now ended up in children's hospital due to health issues and I also have a new baby who was born in this bathroom.

At the start of the hearing, the Tenant confirmed the issue of the ceiling in the bathroom was resolved on May 22, 2023. I am satisfied the Landlord repaired the immediate safety issue about the ceiling.

The Tenant presented that they still take issue with the presence of mould that they suspect is causing ill effects in the health of their children. The Tenant set out the medical attention they had received.

I informed both parties in the hearing that this issue was outside the scope of the Tenant's Application concerning the ceiling in the bathroom.

The Tenant desires a completed test for the presence of excess moisture and/or mould. The Tenant presented that they made inquiries to a local firm that handles these types of tests. The Landlord confirmed the cost of this testing procedure, which is significant.

I informed the Tenant that without submitted proof – in the form of evidence properly shared with the Landlord – about the ill health effects they are attributing to mould in the rental unit, I cannot make any order for the Landlord's action on this item. As stated, the Tenant's Application was of a different nature.

The Tenant may consult with the Residential Tenancy Branch on possible steps they may take to address the issue. I notified the Tenant that any approach to a dispute resolution proceeding on that separate topic would require evidence to show that, more likely than not, there is a legitimate concern that requires the Landlord's attention. For me to make that order without a consideration of evidence would be prejudicial to the Landlord.

Conclusion

Because the Tenant did not serve Notice of this hearing to the Landlord as required, I dismiss the Tenant's Application in its entirety. Because the Landlord completed repairs on the ceiling, I dismiss the matter without leave to reapply.

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

Dated: May 30, 2023

Residential Tenancy Branch