



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S, MNDCL-S**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38.

Neither tenant attended this hearing, although the teleconference connection was kept open throughout. The landlord was represented at the hearing by the landlord’s spouse, FR.

As the tenants did not attend the hearing, I asked the landlord’s agent whether the landlord had served both the tenants with the Notice of Dispute Resolution Proceedings packages. The landlord’s agent responded that he was unaware of whether the landlord ever served the Notice of Dispute Resolution Proceedings packages to the tenants.

Analysis

The Residential Tenancy Branch Rules of Procedure states:

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 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 documents];
- f) by any other means of service provided for in the regulations.

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. (Excerpt reprinted below)

PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

The principles of natural justice and procedural fairness require that each of the tenant/respondents have been put on sufficient notice of the claim against them and that they have had adequate time and opportunity to respond to the application. Based on the landlord's lack of evidence regarding service, I am not satisfied that each

respondent/tenant was properly served with the documents within 3 days, as set out in Rule 3.1 of the Residential Tenancy Branch Rules of Procedure. As such, I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the Act.

Conclusion

The landlord's application for dispute resolution 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: June 05, 2023

Residential Tenancy Branch