



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNRT, MNDCT, RPP, OLC
 LL: MNRL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on March 31, 2023 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for emergency repairs;
- a monetary order for damage or compensation;
- an order for the return of personal property; and
- an order that the Landlord comply with the Act.

The Landlord’s Application for Dispute Resolution was made on March 31, 2023 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order to retain the Tenant’s security deposit; and
- an order granting recovery of the filing fee.

Preliminary Matters – Service of Applications

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 document]...*

The Rules of Procedure also provide guidance with respect to the service of the Notice of Hearings;

3.1 The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch or within a different period specified by the director, serve each respondent with copies 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) any fact sheets 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].

3.4 If a respondent appears to be avoiding service or cannot be found, the applicant may apply to the Residential Tenancy Branch directly or through a Service BC Office for an order for substituted service. An application for substituted service must show that the applicant made reasonable attempts to serve the respondent or provide evidence that shows the other party is unlikely to receive material if served according to the Act. An application for substituted service that is made at the hearing may result in an adjournment.

3.5 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.

The Landlord's Agent R.H. attended the hearing at the appointed date and time. The Tenant attended the hearing six minutes late. At the beginning of the hearing, the Tenant stated that she sent the Landlord a copy of the Notice of Hearing and documentary evidence package by regular mail, through an application called "Whats App", and by text message on or about April 3, 2023. The Landlord's Agent stated that they did not receive the Tenant's Notice of Hearing or evidence. The Landlord's Agent stated that she was surprised to learn that the Tenant had submitted an Application.

The Tenant stated that she had a representative try to serve the Landlord's Agent in person, however, they were unsuccessful. In this case, I find that the Tenant has not served the Landlord in a method outlined in Section 89 of the Act. It is suggested that the Tenant serve the Landlord by Canada Post Registered Mail with tracking. Regular mail, Whats App, and texts are not an approved form of service. The Tenant is also at liberty to apply for Sub-Service. As the Tenant did not serve the Landlord with their Notice of Hearing in accordance with the Act or Rules of Procedure, I find that the Tenant's Application is dismissed WITH leave to reapply.

The Landlord's Agent had applied for Substituted Service and was granted permission to serve the Tenant with the Landlord's Notice of Hearing and documentary evidence by email, pursuant to the June 14, 2023 Sub-Service Decision. The Landlord's Agent stated that she emailed a copy of the Landlord's Notice of Hearing and evidence on April 9, 2023 by email. The Tenant stated that they did not receive the Landlord's Notice of Hearing or evidence. The Landlord's Agent stated that they did not submit any evidence confirming they emailed the above-mentioned documents to the Tenant. I note that April 9, 2023 pre dates that June 14, 2023 Sub-Service Decision.

I further note that the June 14, 2023 Sub-Service Decision states: "*I order the Landlord to provide proof of service of the e-mail which may include a printout of the sent item, a confirmation of delivery receipt, or other documentation to confirm the Landlord has served the Tenant in accordance with this order. If possible, the Landlord should provide a read receipt confirming the e-mail was opened and viewed by the Tenant.*"

I find that the Landlord has provided insufficient evidence to demonstrate that they served the Tenant with the Notice of Hearing and evidence to the Tenant's email address which was the approved method of service. As the Tenant stated they did not receive the Landlord's Application and there is no proof before me that the Landlord

sent these documents, I therefore dismiss the Landlord's Application WITH leave to reapply.

Conclusion

The parties have provided insufficient evidence to demonstrate that they have served each other with their respective Applications and evidence packages in a manner required by section 89(1) of the *Act* and the *Rules of Procedure*. I dismiss the Tenant's and the Landlord's Application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to 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: July 10, 2023

Residential Tenancy Branch