



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, OPM, MNRL-S, FFL; OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the landlord's first application for dispute resolution, filed on April 25, 2023, under the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, for landlord's use of property, and based on a mutual agreement to end tenancy, under section 55;
- a monetary order for unpaid rent, under section 67;
- authorization to retain the tenant's security deposit, under section 38 of the *Act*;
- authorization to recover the \$100.00 filing fee paid for the first application, under section 72.

This hearing also dealt with the landlord's second application for dispute resolution, filed on May 16, 2023, under the *Act* for:

- an order of possession for unpaid rent, under section 55;
- a monetary order for unpaid rent, under section 67;
- authorization to recover the \$100.00 filing fee paid for the second application, under section 72.

The tenant did not attend this hearing. The landlord 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 14 minutes, from 11:00 a.m. to 11:14 a.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 landlord and I were the only people who called into this teleconference.

The landlord confirmed her name and spelling. She provided her email address for me to send a copy of this decision to her after this hearing. She said that she owns the rental unit. She provided the rental unit address.

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

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

At the outset of this hearing, the landlord stated that the tenant vacated the rental unit on June 15, 2023, she took back possession, and she did not require an order of possession. I informed her that these portions of her application were dismissed without leave to reapply. She affirmed her understanding of same.

Preliminary Issue – Service of Landlord’s Two Applications

I provided the landlord with ample and additional time during this hearing to find her two applications and look up service information.

The landlord stated that the tenant was served with the landlord’s first application for dispute resolution hearing package on May 15, 2023, and the second application for dispute resolution hearing package on May 19, 2023, both by way of posting to the door.

As per the RTB online dispute access site, the landlord was emailed the first application package from the RTB, including instructions regarding the hearing process. She was sent a document entitled “Notice of Dispute Resolution Proceeding,” dated May 15, 2023, (“NODRP”) from the RTB, on the same date, after filing this application. The NODRP contains the phone number and access code to call into this hearing. The landlord was sent the NODRP package with explicit instructions to serve the tenant within 3 days, by May 18, 2023. That email provides instructions regarding service to the tenant, methods of service, and proof of service.

As per the RTB online dispute access site, the landlord was emailed the second application package from the RTB, including instructions regarding the hearing process. She was sent an NODRP, dated May 23, 2023, from the RTB, on the same date, after

filing this application. The NODRP contains the phone number and access code to call into this hearing. The landlord was sent the NODRP package with explicit instructions to serve the tenant within 3 days, by May 26, 2023. That email provides instructions regarding service to the tenant, methods of service, and proof of service.

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 two NODRP documents state the following at the top of page 2, in part (my emphasis added):

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].

Accordingly, I find that the landlord failed to provide sufficient evidence that the tenant was served with the landlord's two applications, as per sections 59 and 89 of the Act, Rule 3.1 of the RTB Rules, and the two NODRP documents.

I notified the landlord that posting to a door is not a permitted method of service for monetary applications, pursuant to section 89(1) of the *Act*. I informed the landlord that May 19, 2023, is prior to the second NODRP being issued and sent by the RTB to the landlord on May 23, 2023. The tenant did not attend this hearing to confirm receipt of the landlord's two applications.

The landlord filed both applications on April 25, 2023, and May 16, 2023, respectively, and this hearing occurred on August 31, 2023, months later. The landlord had ample time to serve the tenant, provide sufficient evidence of service, and confirm service during this hearing. The landlord was provided with ample and additional time during this hearing, to locate and provide sufficient service information but failed to do so.

I notified the landlord that her monetary applications were dismissed with leave to reapply, except for the two \$100.00 filing fees paid for both applications, totalling \$200.00, which are dismissed without leave to reapply. I informed her that she was at liberty to file a new application and pay a new filing fee, if she wants to pursue her monetary claims in the future. She affirmed her understanding of same.

Conclusion

The landlord's two applications for a monetary order for unpaid rent and to retain the tenant's security deposit are dismissed with leave to reapply.

The remainder of the landlord's two applications are dismissed without 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: August 31, 2023

Residential Tenancy Branch