



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord AZ attended the hearing, the tenant did not attend although I left the teleconference hearing connection open until 1:50 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution and Request to Submit Late Evidence

On February 8, 2021, the landlords were granted their application for a substituted service order. The Adjudicator made the following orders:

I allow the landlord substituted service of the Application for Dispute Resolution, with supporting documents and written evidence, by text message to the tenant at the phone number indicated on the first page of this decision.

I order the landlord to provide proof of service of the text messages which may include a screen shot of the sent items, a reply from the tenant confirming receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order.

The landlord testified in the hearing that he had sent the tenant the required hearing documents through text message and a messaging application, but was unaware that he was required to provide proof of service of the text messages. The landlord requested permission to provide the proof of service at the time of the hearing.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, the last day for the landlords to file and serve evidence as part of their application was April 5, 2021.

Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. It was undisputed that the landlord did not provide the tenant or the RTB with proof of service as ordered by the Adjudicator in the decision dated February 8, 2021.

The landlords did not supply the required documents accordance with RTB Rule 3.14 and as ordered by the Adjudicator. I am not satisfied that the explanation provided by the landlord meets the definition of exceptional circumstances. The landlord testified that they had the proof of service, but was unaware that they were required to submit it. I find that the order dated February 8, 2021 clearly stated the requirements of the landlords. These rules ensure that a respondent is given the opportunity to respond if they chose to do so. The tenant was not in attendance to respond to this request by the landlord. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I did not allow the landlords to submit any further evidence, including the proof of service.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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].*

The landlord expressed their frustration in the hearing that they were not allowed to submit the proof of service, and that their matter could not be heard as scheduled. Although I am sympathetic to the landlords that they were unaware of the service requirements, I find that the landlords were given clear instructions in the decision dated February 8, 2021 to submit their proof of service, but failed to do so within the time limits as set out by the Rules of Procedure. I find that the landlords had ample time to prepare for this hearing, including preparing and providing the required evidence.

As the tenant did not attend the hearing to confirm that they were aware of the hearing date and time, or calling instructions to attend the teleconference call, and in the absence of the proof of service documents that should have been submitted and served by the landlords before the hearing, I find that the landlords have failed to provide sufficient evidence to support that their application package was served in accordance with section 89 of the *Act*. I therefore dismiss the landlords' entire application with leave to reapply. Liberty to reapply is not an extension of any applicable time limits.

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: April 20, 2021