



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

An Agent for the Landlord and an Agent for the Tenant attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

The Tenant’s Agent testified that they had not received the Notice of Dispute Resolution Hearing documents or the Landlord’s documentary evidence. The Tenant’s Agent testified that the only reason they knew about the hearing today was due to an email they received from the Residential Tenancy Branch, reminding them of today’s proceedings.

Section 71 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

“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 Landlord’s Agent testified that they sent the Notice of Dispute Resolution Hearing documents and their documentary evidence to the Tenant by email on June 17, 2021. The Landlord was asked to provide proof of this service; the Landlord’s Agent testified that they had not submitted any evidence to prove this service.

The Residential Tenancy Branch Rules of Procedure goes on to state that an applicant must be prepared to provide proof of service:

“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.”

As the service of the Notice of Dispute Resolution Hearing documents cannot be verified, I find that the Tenant had not been duly served in accordance with sections 3.1 of the Residential Tenancy Branch rules of procedure. Therefore, I dismiss the Landlord’s application.

Conclusion

I dismiss the Landlord's application.

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: November 30, 2021

Residential Tenancy Branch