



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants GP (the tenant) and JS and the landlord attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The tenant affirmed she did not serve the notice of hearing to the respondent in any of the ways described in section 89 of the Act. The landlord called the Residential Tenancy Branch (the RTB) and received a copy of the notice of hearing from the RTB.

Rule of Procedure 3.1 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].

(emphasis added)

I accept the uncontested testimony that the tenants did not serve the notice of hearing.

The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

As the tenants did not serve the notice of hearing, I dismiss the tenants' application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

As the tenants were not successful, the tenants are not entitled to recover the filing fee.

Both parties confirmed their current addresses for service. The addresses are recorded on the cover page of this decision.

Conclusion

I dismiss the tenants' application 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 13, 2022

Residential Tenancy Branch