



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

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 landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit, under section 38; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 2:18 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord was represented by property managers KR and KE (the landlord). The landlord's representatives were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

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 RTB issued a decision on January 07, 2022 authorizing the landlord to serve tenant RP via email:

For this reason, I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by e-mail to the tenant at the e-mail address indicated on the first page of this decision.

I order the landlord to provide proof of service of the e-mail which may include a print-out 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.

Conclusion

The landlord is granted an order for substituted service. The landlord may serve the tenant the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenant's e-mail address as set out above.

I order that documents served in this manner have been sufficiently served to the tenant for the purposes of the Act, three days after the date that the e-mail is sent by the landlord to the tenant.

KR and KE affirmed they did not receive the January 07, 2022 decision.

The RTB emailed the January 07, 2022 decision to the landlord on January 11, 2022. KR confirmed the landlord's email address during the hearing and I confirmed the RTB emailed the January 11, 2022 to the correct email address (recorded on the cover page of this decision).

KR stated she did not serve the notice of hearing to RP, as she was not aware of the January 07, 2022 decision. Later KE testified that he served both tenants via email.

The landlord submitted into evidence the move out inspection report signed only by the landlord stating the tenants did not provide their forwarding address.

KR and KE said the tenants provided their forwarding address via text message on December 09, 2021. The message states:

[*****53]

Hello. My name is JB. My daughter is BB. I'm just wanting to touch base as one of her references contacted me yesterday and I would prefer all further contact go through me and that you do not harass her references. They are not responsible or liable for anything BB has done.

[view all >]

[address]

KE called phone number *****53 during the hearing. The person that answered the phone call affirmed the phone number belongs to JB, that JB is not available to answer the phone, and that JB is the mother of BB.

KR served the notice of hearing and the evidence to tenant BB via registered mail on December 09, 2021. KR served a second evidence package on June 22, 2022. Both packages were mailed to the address provided by JB on December 09, 2022. The address and the tracking numbers are recorded on the cover page of this decision.

KR submitted a proof of delivery of registered mail indicating the first package was delivered on December 17, 2021.

KE joined the teleconference late and stated that both tenants were represented by JB. KE submitted the December 10, 2021 email sent by JB: "You can send it to my address and I can get BB to give it to her [RP]. I don't know her dad's info or anything. JB."

KE submitted an email sent by RP on August 15, 2021:

Hi. My name is RP [...] My roommate is BB. I have come to the point where I can longer stay in the home as I have no privacy, am being terrorized both at home and work, and getting threats of the door locked or being kicked out multiple times a week. [...]

I would like to move out Wednesday the 18th of 2021. She also has torn apart my room looking for something she says she paid for but still has yet to pay me back for an ripped a blanket off me when I wanted to be left alone recently.

I asked the landlord's representatives if there is a document signed by the tenants authorizing JB to represent them. KE testified there is no document signed by the tenants appointing a representative and that the tenants are 19 years old.

Section 89(1) of the Act states:

(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];

(f) by any other means of service provided for in the regulations.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

Any applicant for dispute resolution must provide an address for service. This could be a home, business or other address that is regularly monitored.

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Rule of Procedure 6.8 states: "The arbitrator may require an agent to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose."

RTB Policy Guideline 26 states:

Agents

An agent acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlord, and as such may have evidence to present at the hearing. **A tenant may appoint any trusted person as their agent.** Where a party chooses to attend the hearing, they are entitled to remain with their agent throughout.

Unlike advocates, agents have full authority to settle the claims and may be named as a party to the dispute.

An agent may:

- Apply for dispute resolution on behalf of the landlord or tenant
- **Prepare, organize, serve and submit evidence**
- **Make submissions on behalf of the party**
- Ask questions of the other party and witnesses with respect to their evidence
- Settle claims

Agents may be required to provide written verification that they have been appointed by the landlord or tenant to act or appear on their behalf at the dispute resolution proceeding and that they have full authority to settle a claim. This is particularly important when the agent has not had direct involvement during the tenancy. Written verification is not required where a party attends the hearing with his or her agent.

The landlord did not submit a document issued by the tenants indicating that they appointed JB as an agent to represent them. The tenants are of legal age. The December 09, 2021 text messages were sent by JB and JB did not attend the hearing to provide testimony that she represents the tenants.

I find that KE's testimony that JB represents both tenants was not convincing. Furthermore, the August 15, 2021 email sent by RP indicates that RP did not have a good relationship with BB. The December 10, 2021 email does not indicate that JB represents RP.

Thus, I find the landlord failed to prove, on a balance of probabilities, that JP represents either of the tenants.

Per section 89(1)(c) and (d), the landlord must serve the notice of hearing to the address where the tenant resides or the forwarding address provided by the tenant. The landlord did not submit a document to prove the tenant's forwarding address or current address where they reside. As stated above, the only documents submitted were issued by JB, and the landlord did not prove that JB represents either of the tenants.

As such, I find the landlord failed to prove, on a balance of probabilities, that he mailed the notice of hearing to the tenants' addresses for service.

KE and KR provided conflicting testimony about serving the notice of hearing via email and did not provide the print out of the email sent, as required by the January 07, 2022 decision emailed to the landlord.

Based on the landlord's conflicting testimony, I find the landlord did not serve the notice of hearing via email.

I find the landlord did not serve the notice of hearing in accordance with section 89(1) of the Act.

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)

As the landlord did not serve the notice of hearing in accordance with section 89(1) of the Act, I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

When I was explaining my decision KE interrupted me several times. I muted KE and when I finished explaining my decision, I unmuted KE.

KE stated he will submit a complaint to the RTB and that I was biased and ignored the legislation and the evidence. As I explained that I am a neutral decision-maker KE and KR disconnected from the hearing.

Conclusion

I dismiss the landlord's 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: July 13, 2022

Residential Tenancy Branch