



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on August 28, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord and the landlord's three agents, "landlord DL," "landlord SM," and "landlord MM," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:12 a.m. I monitored the teleconference line throughout this hearing. 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, the landlord's three agents, and I were the only people who called into this teleconference.

Landlord DL confirmed the names and spelling for him and the landlord. Landlord SM confirmed the names and spelling for him and landlord MM. Landlord DL provided his email address for me to send this decision to the landlord after the hearing.

Landlord DL stated that he is the son of the landlord named in this application and that he had permission to speak on the landlord's behalf at this hearing. He said that his

mother was present during this hearing, but she did not participate. He provided the rental unit address. He claimed that landlord SM and landlord MM had permission to represent the landlord at this hearing.

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, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to all hearing participants. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests. They confirmed that they were ready to proceed with this hearing.

Preliminary Issue – Service of Landlord’s Application

Landlord MM testified that she served the tenant with the landlord’s application for dispute resolution hearing package, on September 15, 2022, by way of registered mail. Both landlord SM and landlord MM said that they did not have the registered mail tracking number in front of them during this hearing, so they could not confirm it. They claimed that they submitted a registered mail receipt to the online RTB dispute access site, with the landlord’s application. I informed them that I did not receive a registered mail receipt from the landlord for the above date. Landlord DL said that he was not involved in the service of the landlord’s application.

Section 59(3) of the *Act* states the following:

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:

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 was provided with an application package from the RTB, including instructions regarding the hearing process. The landlord was provided with a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing this application. The NODRP document contains the phone number and access code to call into this hearing.

The NODRP document states 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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes **any method of mail delivery provided by Canada Post** for which **confirmation of delivery to a named person** is available.*

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service **as well as a copy of the printed tracking report.

I find that the landlord did not serve the tenant with the landlord's application, as required by section 89 of the *Act*, Residential Tenancy Policy Guideline 12, and as stated on the NODRP document that was provided by the RTB to the landlord with this application package.

I informed the landlord and his agents that they did not provide a registered mail receipt or tracking number to prove service of the landlord's application to the tenant on September 15, 2022. I notified them that the landlord submitted registered mail receipts from December 2022, for mailing of other documents. They confirmed their understanding of same.

The landlord and his agents were provided with ample time of 12 minutes during this hearing, in order to search for and provide service information and failed to do so. The tenant did not attend this hearing to confirm receipt of the landlord's application.

I notified the landlord and his agents that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee, which was dismissed without leave to reapply. I notified them that the landlord could file a new application, if he wants to pursue these claims in the future. They confirmed their understanding of same.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed 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: January 17, 2023

Residential Tenancy Branch