



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with the tenant's application, filed on July 25, 2022, pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$20,000.00 for compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") and the landlord has not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51.

The landlord did not attend this hearing. The tenant attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 12 minutes, from 1:30 p.m. to 1:42 p.m. The tenant left the hearing from 1:32 p.m. to 1:33 p.m., stating that he accidentally disconnected from the conference.

I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference.

The tenant confirmed his name and spelling. He provided his email address for me to send this decision to him after this hearing. He confirmed the rental unit address.

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, the tenant affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the tenant. I informed him that I could not provide legal advice to him. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Tenant’s Application

During this hearing, I provided the tenant with ample and additional time to look up service evidence and information.

The tenant testified that the landlord was served with a copy of the tenant’s application for dispute resolution hearing package, sometime in December 2022, by personally leaving a copy in the landlord’s mailbox. He said that he did not know the exact date of service.

As per the online RTB dispute access site, the tenant was emailed an application package from the RTB, including instructions regarding the hearing process. The tenant was sent a document entitled “Notice of Dispute Resolution Proceeding,” dated August 11, 2022 (“NODRP”) from the RTB, after filing this application.

The NODRP contains the phone number and access code to call into this hearing. The NODRP package was sent to the tenant by email on August 11, 2022, with instructions to serve the landlord by August 14, 2022. That email provides instructions regarding service to the landlord, methods of service, and proof of service.

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

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 (my emphasis added):

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 tenant was provided with an application package from the RTB, including instructions regarding the hearing process. The tenant was provided with an NODRP document, dated August 11, 2022, which contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added, which I informed the tenant about during this hearing):

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.***

Accordingly, I find that the landlord was not served with the tenant's application, as per sections 59 and 89 of the *Act*, Rule 3.1 of the *RTB Rules*, Residential Tenancy Policy Guideline 12, or the NODRP.

The tenant did not provide an exact date of service. December 2022 is not within 3 days of August 11, 2022. The tenant personally delivered his application to the landlord's mailbox, which is not permitted by section 89 of the *Act*.

The tenant did not send the application by registered mail. He did not provide a Canada Post receipt, tracking number, or tracking report.

The landlord did not attend this hearing to confirm receipt of the tenant's application.

The tenant filed this application on July 25, 2022, and this hearing occurred on April 20, 2023, almost 9 months later. The tenant had ample time to serve the landlord with his application and provide evidence of service.

I notified the tenant that his application was dismissed with leave to reapply. I informed him that he was at liberty to file a new application, if he wants to pursue this matter in the future. I cautioned him about statutory limitation dates for filing a new application, since he indicated in this application that his tenancy ended on November 30, 2021. I informed him that he could seek legal advice from a lawyer if he required same. He affirmed his understanding of same.

Conclusion

The tenant'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: April 20, 2023

Residential Tenancy Branch