



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes: MNDC, OLC, RP, RPP, FF

Introduction / Background / Evidence

This hearing was scheduled in response to the tenant's application for a monetary order for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / an order instructing the landlord to return personal property / and recovery of the filing fee.

The landlord did not attend the hearing, and the tenant gave affirmed testimony concerning service of the application for dispute resolution and notice of hearing (the "hearing package").

The tenant testified that he has four (4) different addresses for the landlord. While he identified one (1) of these on his application for dispute resolution, that is not the same address he used for service of the hearing package. Ultimately, the tenant requested that the landlord provide a mailing address, and the address used for service of the hearing package is a post office box address which the landlord provided to the tenant in an e-mail response dated February 15, 2012. Subsequently, the tenant served the hearing package by way of registered mail on February 16, 2012. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail.

Issue(s) to be Decided

Whether service of the hearing package complies with the Act.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 88 of the Act speaks to **How to give or serve documents generally**. Section 89 of the Act addresses **Special rules for certain documents**, and provides in part:

89(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*].

Pursuant to the landlord's e-mail to the tenant dated of February 15, 2012, it appears on the face of it that the address used by the tenant for service of the hearing package is the address at which the landlord carries on business as a landlord.

Section 59 of the Act speaks to **Starting proceedings**, and provides in part:

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.

The tenant filed his application for dispute resolution on January 30, 2012, and received a "notice of a dispute resolution hearing" from the Residential Tenancy Branch which is dated January 31, 2012. However, it was not until fifteen (15) days later when the tenant was informed of a mailing address by the landlord, and sixteen (16) days later when the tenant mailed the hearing package and all of his related documentary evidence to the landlord. Accordingly, I find that service of the hearing package does not strictly comply with the statutory provisions set out immediately above.

Further, Rule 3.5 of the Residential Tenancy Branch Rules of Procedure speaks to "Evidence not filed with the Application for Dispute Resolution," and provides in part:

- a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the “Definitions” part of the Rules of Procedure.

The attention of the parties is also drawn to section 90 of the Act which addresses **When documents are considered to have been received**. In part, this section of the Act provides as follows:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed.

Conclusion

In view of all the above, this hearing is hereby adjourned. A new hearing will be scheduled and the Branch will issue new “notices of a dispute resolution hearing” (the “notices”). The “notices” will be mailed to the tenant under separate cover. The tenant must serve the landlord with a copy of the new “notice,” as well as copies of all evidence on which the tenant intends to rely, in accordance with the service provisions described above. Copies of all evidence on which the tenant intends to rely must also be provided to the Branch.

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: February 22, 2012.

Residential Tenancy Branch