



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction / Background / Evidence

This hearing was scheduled in response to the tenants' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The tenants participated and gave affirmed testimony.

The landlord did not appear at the hearing. The tenants testified that they served the landlord with their application for dispute resolution, the notice of hearing and copies of all related documentation (the "hearing package") by way of registered mail. However, documentary evidence in relation to mailing is limited to a receipt issued by Canada Post in the total amount of \$3.19.

I also note that while the notice of hearing issued to the tenants by the Residential Tenancy Branch is dated January 10, 2012, the receipt for mailing of the hearing package issued by Canada Post is dated January 14, 2012.

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 addresses **How to give or serve documents generally**. Section 89 of the Act speaks to **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 or 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*].

Section 59 of the Act addresses **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.

I find on a balance of probabilities that the amount paid by the tenants for mailing of the hearing package falls short of the amount required for registered mail. Further, there is no evidence of a Canada Post tracking number for registered mail.

I also find that the application for dispute resolution which formed part of the hearing package, was not mailed within 3 days after January 10, 2012, which is the date shown on the notice of hearing issued by the Residential Tenancy Branch to the tenants.

Accordingly, in the absence of sufficient evidence that the hearing package was served in compliance with either section 89 or 59 of the Act, the tenants' application is hereby dismissed with leave to reapply.

Conclusion

Following from all of the above, the 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: March 14, 2012.

Residential Tenancy Branch