



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of rent and the security deposit, The tenant also applied for the cost of moving.

The tenant made this application on line on August 23, 2014. In an email dated August 25, 2014 to the tenant, the Residential Tenancy Branch informed the tenant that his application had been processed and gave him instructions on how to print the notice of hearing package and how to proceed from there. One of the steps that the tenant was required to take was stated in the letter as follows:

You must serve the full Notice of Hearing package to the respondent in the next 3 days either in person, or by sending the documents to each respondent by Canada Post registered mail.

The tenant served the notice of hearing and evidence package on the landlord on February 15, 2015 by registered mail. The package was not picked up by the landlord. The landlord did not attend the hearing. The tenant sent the package to the last known address of the landlord.

Section 59(3) of the *Residential Tenancy Act* states that 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.

Since the tenant mailed the package five and a half months after receiving it and the landlord did not pick up the package or attend the hearing, I find on a balance of probabilities that the landlord did not receive the package. It is possible that the landlord may have moved to a new address.

The tenant argued that the landlord was aware of the hearing date and filed a copy of an email sent by the landlord dated September 01, 2014. In the email the landlord states "*The BC Tenancy will be reviewing our case in March 2015. They will be in touch in due time*"

It appears that the landlord was waiting to hear from the Residential Tenancy Branch regarding the scheduling of the hearing. The landlord would have no way of calling into the hearing by conference call if he did not receive the notice of hearing which contains the instructions and required code to join the conference call.

The purpose of serving a notice of hearing under the Legislation is to notify the person being served of matters relating to arbitration. The landlord is entitled to have an opportunity to be heard at the hearing.

The tenant also stated during the hearing that he had not provided the landlord with his forwarding address. Pursuant to s.38 of the *Residential Tenancy Act*, the tenant must provide the landlord with his forwarding address in writing to enable the landlord to return the security deposit or apply to retain a portion of it.

Based on the above, I am not satisfied that the landlord was served with the notice of hearing and evidence package pursuant to s.88 and therefore I dismiss the tenant's application with leave to reapply.

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: March 20, 2015

Residential Tenancy Branch

