



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vica Royal Vacations
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, OLC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for the return of the security deposit and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement.

The Landlord did not attend the hearing.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Tenant stated that he believes the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord by registered mail.

The Tenant stated that he believes the Application for Dispute Resolution and Notice of Hearing were mailed by one of the co-applicants on June 25, 2015. This submission is not supported by Residential Tenancy Branch records, which indicate these documents were not provided to the Tenants until July 03, 2015.

The Tenant stated that he believes one of the co-applicants submitted a copy of the Canada Post receipt to the Residential Tenancy Branch on June 25, 2015. This submission is not supported by Residential Tenancy Branch records, which indicate that no evidence was received after the Application for Dispute resolution was filed.

The Tenant stated that he believes his co-applicant has the Canada Post receipt that relates to the aforementioned mailing, but this co-applicant is not available to participate in the teleconference. The Tenant was unable to provide a tracking number to corroborate his submission that the Application for Dispute Resolution was mailed to the Landlord.

Analysis:

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to the other party is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord.

When a tenant files an Application for Dispute Resolution in which the tenant has applied for the return of the security deposit, the tenant has the burden of proving the landlord was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Act*. Section 89(1)(c) of the *Act* allows a tenant to serve a landlord with an Application for Dispute Resolution by registered mail.

I find that the Tenants have submitted insufficient evidence to establish that the Application for Dispute Resolution was served to the Landlord by registered mail. In reaching this conclusion I was influenced by:

- the absence of any documentary evidence from Canada Post which supports this submission;
- the absence of oral or documentary evidence from the person who allegedly mailed the documents; and
- the Tenant's inability to provide a Canada Post tracking number.

As the Tenants have failed to establish that the Landlord was served with the Application for Dispute Resolution, I find that I am unable to proceed with the hearing in the absence of the Landlord.

Conclusion:

As the Tenants have failed to establish that the Landlord was served with the Application for Dispute Resolution, the Application is dismissed with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution.

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: December 14, 2015

Residential Tenancy Branch

