



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PAL VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62.

The tenant and her agent, AK, and the landlord's two agents, landlord EL and landlord GG, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. All agents confirmed that they had authority to speak on behalf of their respective parties at this hearing.

Preliminary Issue – Service of Tenant's Application

The tenant's agent confirmed that the tenant's application for dispute resolution hearing package ("Application"), which was filed on September 23, 2015, was served upon the landlord on March 31, 2016, by way of registered mail. The tenant provided a Canada Post receipt and tracking number. The tenant's agent said that he filed the application online and forgot to check his "spam" email folder, where the Residential Tenancy Branch ("RTB") sent the completed Application package including the hearing notice. He said that after wondering what happened to the Application, he checked his email and found the Application.

Landlord EL confirmed receipt of the tenant's Application on April 6, 2016, the day before this hearing. She stated that the landlord did not have a chance to respond to the tenant's Application and she was not prepared to proceed with this hearing.

I advised both parties that I could not proceed with the hearing. I notified the parties that the tenant was required to serve the Application package within 3 days of receiving

it from the RTB, as required by section 59(3) of the *Act*. The hearing notice was dated for September 24, 2015, and the Application was due to be served by September 27, 2015. The Application was served over six months later on March 31, 2016. I found that there was prejudice to the landlord because it did not have a chance to submit evidence or respond to the tenant's Application, given that the landlord received it the day before this hearing.

I advised the parties that the tenant's entire Application was dismissed with leave to reapply. I notified the tenant's agent that the tenant would be required to file a new application for dispute resolution and pay a new filing fee if she wished to pursue the matter further. I cautioned the tenant's agent about the deadlines for serving the Application within 3 days of receipt from the RTB. I cautioned both parties about the service of evidence prior to the hearing, which is 14 days for the applicant and 7 days for the respondent, not including the hearing date in the above calculations. Both parties confirmed their understanding of the above information.

Conclusion

The tenant's entire 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 08, 2016

Residential Tenancy Branch