



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, return of the security deposit and/or pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issue – Service of hearing package

The landlord testified that she had not received the tenant's Application for Dispute Resolution or Notice of Hearing or any other documents except a Digital Evidence Details worksheet that was accompanied by a thumb-drive. The landlord acknowledged that she received the thumb-drive in June 2016. The landlord explained that she learned of the hearing by contacting the Residential Tenancy Branch after receiving the thumb-drive from the tenants and she was informed of today's scheduled hearing by a Branch staff person.

I noted that I had been provided a registered mail receipt dated May 21, 2016. The tenants stated that this mailing was for service of the tenant's evidence, including the thumb-drive but that the hearing package filed on March 23, 2016 had been mailed to the landlord via registered mail on March 23, 2016. I asked the tenants, twice, to provide me with the registered mail tracking number for the mailing to the landlord on March 23, 2016. The tenants eventually located one registered mail receipt dated March 23, 2016 that included a tracking number, and they provided it to me orally. The tracking number was searched on the Canada Post website and the search revealed that the registered mail was sent to a location in Burnaby but not the city where the landlord is located. The tenants explained that they had mailed two registered mail packages on March 23, 2016: one to the Residential Tenancy Branch and the second to the landlord. Accordingly, I was of the view the tenants should be able to provide two registered mail tracking numbers for mail sent on March 23, 2016. The tenants were unable to retrieve another receipt for sending a package on March 23, 2016 but it did not include a registered mail tracking number. The tenants testified that the package sent to the landlord in March 2016 was not returned to them. I found the information to be insufficient proof of service and since more than 30 minutes of hearing time had elapsed and service of the tenant's Application had not

been established, I informed the parties that I would dismiss the Application with leave to reapply.

As explained to the parties, the applicant has the burden to prove the hearing package was sent to the respondent in a manner that complies with the Act. The hearing package must be sent within three days of filing, as provided under section 59. Further, the method of service must comply with section 89 of the Act. A monetary claim must be sent by registered mail or personal delivery to the respondent. If registered mail is used the burden is upon the applicant to demonstrate the service address used is correct. Service of the hearing package is intended to put the other party on notice as to the nature of the claims against them and the opportunity to response, in keeping with the principles of natural justice.

The tenants also submitted that the relevant documentation was scanned and included in the thumb-drive. I did not accept service of the hearing package by way of the thumb-drive as it was sent well over three days after filing and Rule 3.10 of the Rules of Procedure provide that documentation is to be served in printed format with digital evidence limited to photographs, audio and video recordings.

As the hearing was ending and as I was confirming mailing addresses with each of the parties the landlord stated that the service address that I read from the tenant's Application incorrect. This information provides a possible explanation as to why the tenant's package of March 23, 2016 was not received by the landlord and not returned to the tenants. In any event, in the absence of a registered mail tracking number, it is not certain what happened to the package sent to the landlord on March 23, 2016. The landlord provided her correct service address and I have recorded it on the cover page of this decision.

Conclusion

The tenant's application has been dismissed with leave to reapply due to insufficient proof of service of the hearing package upon the landlord.

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: August 10, 2016

Residential Tenancy Branch

