



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, ERP, RP, RR.

Introduction

This was an application by the tenants for several orders namely: that the landlord complies with the Act, make repairs and that their rent be reduced pending repairs. Only the tenants attended the application.

Issue(s) to be Decided

Are the tenants entitled to the relief claimed, and if so to what extent and how much should their rent be reduced by?

Preliminary Issues and Service:

The tenants testified that they sent the dispute resolution package to the landlord's address contained in their tenancy agreement by registered mail on December 9, 2016. They testified that they checked Canada Post's web site with their tracking number and that the site indicated the package was out for delivery. They were not sure whether it was out for delivery to the recipient or being returned to them. Because of the uncertainty of their evidence I advised the parties that I would also check Canada Post's web site with their tracking number during the hearing. The site reported as follows:

Unfortunately, the number you entered is not in our tracking system.

You entered a valid number, but we are not able to show the tracking information for one of the following reasons:

The item is in transit, but we haven't yet received it from the sender

The item is coming from another country and is not in Canada yet. Track it on the postal website of the originating country first.

The item was shipped more than a year ago
The sender chose a service that doesn't include tracking

Please note that this is the most up-to-date information available in our system. Our customer service representatives have access to the same information presented here. If a tracking number is not in our system, our customer service representatives are not able to provide any further details.

The rules pertaining to service of applications for dispute resolution are found in sections 89 and 90 of the Act:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of 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*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;

- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

In this matter based upon the evidence of the tenants and information from Canada Post's web site, I am not satisfied that the landlord ever received the package because either it is still in the process of being delivered, or is in transit for some other reason. Furthermore, I find that the deemed service provision of section 90 of the Act is not of any assistance as it can deem service as a rebuttable presumption only where there are no other facts available. Accordingly based upon the evidence adduced by the tenants and the information from Canada Post's web site I find that the tenants have not proven service of the application upon the landlord. I am therefore bound to dismiss their applications with leave to reapply.

Conclusion

I have dismissed the tenants' applications with leave to reapply. There will not be any recovery of the filing fee.

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: January 10, 2017

Residential Tenancy Branch