



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent, retention of the security deposit, recovery of the filing fee, and an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I inquired with the Landlord regarding service of the documents as explained below.

In the hearing the Landlord testified that he sent the Application and Notice of Hearing to the Tenant at the rental unit by registered mail on December 4, 2017, and that the Tenant moved out of the rental three days later on December 7, 2017. The Landlord testified that the mail delivery service provider placed a registered mail pick-up notice for the Tenant in the mailbox for the property on December 6, 2017, and that he took this notice and placed it directly on the Tenant’s door on December 6, 2017. The Landlord stated that another occupant witnessed the Tenant remove the notice from the door on December 6, 2017, however, the witness did not attend the hearing and the Landlord did not provide any documentary evidence from them in support of this testimony.

Section 59 of the Act states the following with regards to the service of the Application on the Respondent:

Starting proceedings

- 59** (3) Except for an application referred to in subsection (6), 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, or within a different period specified by the director.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Section 90 of the *Act* states that a document given or served by registered mail is deemed to be received on the fifth (5th) day after it is mailed, unless earlier received. Although the Landlord testified that a witness saw the Tenant remove the registered mail pick-up notice from their door on December 6, 2017, the Landlord himself did not witness this and there was no testimony or documentary evidence before me from the witness to corroborate this testimony. As a result, I do not find that the Landlord has satisfied me that the Application and Notice of Hearing were received by the Tenant earlier than the date they would have been received according to section 90 of the *Act*.

Based on the testimony and documentary evidence before me, I find that the deemed service date for the registered mail was after the date in which the Tenant had already moved out. As a result of the above, I find that the Tenant has not been served with the Application and the Notice of Hearing in accordance with the above noted sections of the *Act* and the Rules of Procedure. As the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process I find that it would be administratively unfair, and a breach of both natural justice and the Rules of Procedure to proceed with the Landlord's claim as the Tenant did not have a fair opportunity to know the case against them or appear in their defense. As a result, the Application is dismissed with leave to reapply.

As the Landlord's Application is dismissed, I decline to grant recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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: February 19, 2018

Residential Tenancy Branch