



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABOUGOUSH HOLDINGS LTD. DBA SPRING VALLEY WEST
APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 26, 2017 (the "Application"). The Tenants applied for the return of their security deposit and for reimbursement for the filing fee.

Tenant B.M. appeared at the hearing and appeared for Tenant K.P.P. Nobody appeared for the Landlord. The hearing process was explained to Tenant B.M. and she did not have questions when asked. Tenant B.M. provided affirmed testimony.

The Tenants had submitted 16 pages of evidence. The Landlord had not submitted any evidence. I addressed service of the hearing package and Tenants' evidence. Tenant B.M. said she thought she served the hearing package on the Landlord. She said she gave a representative of the Landlord something. She said she did not remember what was in the package. Tenant B.M. said she served a copy of her evidence on the representative of the Landlord on September 26, 2018.

Tenant B.M. had submitted a Proof of Service document relating to a Notice of Direct Request Proceeding. It states that a Notice of Direct Request Proceeding and a copy of all supporting documents were hand delivered to the representative of the Landlord on September 29, 2017. It states that Tenant K.P.P. witnessed this.

I told Tenant B.M. that the Residential Tenancy Branch (the "Branch") records show the Notice of Hearing was emailed to both Tenants on October 2, 2017. Tenant B.M. did not remember whether this Notice of Hearing was served on the Landlord. Tenant B.M. checked with Tenant K.P.P. about service of the hearing package on the Landlord but Tenant K.P.P. did not recall either.

The *Residential Tenancy Act* (the “*Act*”) and Rules of Procedure (the “*Rules*”) set out service requirements in relation to applications for dispute resolution.

Section 59(3) of the *Act* states that an applicant must serve the application on the respondent within three days of filing the application.

Rule 3.1 of the Rules states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) 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].

Rule 3.5 of the Rules states that an applicant must be prepared to satisfy the arbitrator at the hearing that the respondent was served with the Notice of Dispute Resolution Proceeding Package as required by the *Act* and Rules.

I note that the “Residential Tenancies Fact Sheet” that would have been sent to the Tenants upon filing the Application includes information about the above service requirements.

The purpose of the service requirements in the *Act* and Rules is to put respondents on notice of the hearing and to give them an opportunity to respond to the claims being made against them. Service of the hearing package on a respondent is essential to ensure principles of natural justice and procedural fairness are applied.

Based on the evidence of Tenant B.M., I accept that she served the Tenants' evidence on the representative of the Landlord. It appears that the Proof of Service document relates to service of the evidence package on the Landlord. I am not satisfied that the Tenants served the hearing package on the Landlord based on the evidence of Tenant B.M.

The Branch records show that this hearing was not set until October 2, 2017. The records show the Notice of Hearing was emailed to both Tenants on October 2, 2017. The Notice of Hearing is dated October 2, 2017. Based on the Branch records, I find that the package served on the representative of the Landlord on September 26 or 29, 2017 could not have included the Notice of Hearing as it had not yet been generated or sent to the Tenants.

Given I am not satisfied the Tenants served the hearing package on the Landlord, and because the Landlord did not appear at the hearing, I dismiss the Application with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

Conclusion

The Application is dismissed with leave to re-apply given I am not satisfied the Landlord was served with the hearing package and because the Landlord did not appear at the hearing. This decision does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 15, 2018

Residential Tenancy Branch