



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, 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 damage to the rental unit, money owed or compensation for damage of loss under the Act, regulation, or tenancy agreement, unpaid rent and the recovery of the filing fee, as well as authorization to withhold the security deposit.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants 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 Tenants 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 the Tenants vacated the rental unit on October 15, 2017, but did not provide a forwarding address. The Landlord stated that instead of providing a forwarding address, the Tenants advised him that they would set up mail forwarding and requested that he send anything to them at the rental address. As a result, the Landlord stated that he sent the Tenants copies of the Application and the Notice of Hearing at the rental address by registered mail on October 23, 2017. The Landlord provided me with the registered mail tracking number and with his permission, I logged into the mail service provider’s website to review the tracking information which showed that although the registered mail was sent to the Tenants as described, it was never picked up by them and was subsequently returned to the Landlord.

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].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Although the Landlord testified that the Tenants requested that he send them mail at the rental address and that their mail was being forwarded to them, he did not provide any documentary evidence to support this testimony. Further to this, the registered mail was sent to the Tenants at the rental address after they had already moved out and the registered mail tracking information shows that the Tenants never received the registered mail. In the absence of evidence to corroborate the Landlord's testimony that the Tenants specifically requested that the Landlord contact them by mail at the rental

address after the end of the tenancy, I find that mailing the Application and Notice of Hearing to them at the previously vacated rental unit does not constitute service under the *Act*. As a result, I find that the Tenants have not been duly served with the Application, the Notice of Hearing, or the evidence before me in accordance with the above noted sections of the *Act* and the Rules of Procedure.

Further to this, I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Tenants were not served with the Application, Notice of Hearing, or the evidence before me, I find that they did not have a fair opportunity to know the case against them or appear in their defense. As a result, the Landlord's Application is dismissed with leave to reapply.

As the Landlord was not successful in his Application, I decline to grant him 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: May 15, 2018

Residential Tenancy Branch