



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR & FF

The Application for Dispute Resolution filed by the landlords makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$6253 for unpaid rent
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. The tenancy ended on May 30, 2018 after the parties entered into a settlement and the landlords obtained a Writ of Possession. All of the evidence was carefully considered.

There is a great deal of animosity between the parties. The Tenant testified he was not served with the Application for Dispute Resolution and that he is unable to respond to the Landlords' claims. He further testified he was not served with the Amendment to the Application for Dispute Resolution. The tenant testified he has given the landlords a number of e-mails requesting that they provide him with the Application for Dispute Resolution so that he can prepare but the landlords failed to provide the Application for Dispute Resolution.

The landlords testified they served the Application for Dispute Resolution by registered mail to the address where the Tenant resides. They produced a registered mail receipt. They testified they viewed a signature on line and were unable to determine whether it was the tenant or someone else in the rental unit who signed for the package. The landlords failed to provide a copy of the document from Canada Post indicating who signed for the package. They further testified they went on line recently and were not able to access the evidence relating to whether the Application was successfully served on the Tenant.

The landlords filed an Amendment to the Application for Dispute Resolution increasing the monetary claim from just over \$3000 to \$6253. The tenant vacated the rental unit on May 30, 2018 and did not provide a forwarding address to the landlords. The landlords attempted to serve this document by e-mail. They have not served the Amendment by a method required by the Residential Tenancy Act.

The tenant stated he is not attempting to avoid service. He provided his present address as 28 West 48th Avenue, Vancouver, B.C. V5Y 2Y5 and represented the landlord can serve hearing papers to him by registered mail at that address.

The tenant also testified he has claims against the landlord for work done on the property and for the reduced value of the tenancy as the rental unit was previously a grow operation. He stated that he intends to file an Application for Dispute Resolution.

The landlords stated that they have additional claims to those identified in the Application for Dispute Resolution and the Amendment to the Application for Dispute Resolution.

Analysis:

Service by registered mail creates a presumption of service. However, the Supreme Court of British Columbia has held that the presumption can be rebutted. In this case the tenant testified he never received the Application for Dispute Resolution and the Amendment to the Application for Dispute Resolution. The landlords produced a registered mail receipt that indicates a package was sent to the Tenant at the end of April. However, the landlord failed to provide the document from Canada Post that indicates the package was received by the Tenant. Further, they stated that they viewed the signature online (no longer available) and it was uncertain whether it was the tenant's signature or someone else in the house acknowledging receipt of the package.

I determined the landlords failed to prove they have sufficiently served the Tenant with the Application for Dispute Resolution and the Amendment to the Application for Dispute Resolution. **As a result I dismissed the landlords' application with liberty to re-apply.**

In the circumstances I determined this is a fair result as the landlords intend to increase their monetary claims and the tenant intends to file a new claim. It would be appropriate for both monetary claims to be heard at the same time.

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: June 18, 2018

Residential Tenancy Branch