



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On May 15, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") requesting a monetary order for losses due to the tenancy, permission to retain the security deposit, and the return of the filing fee. The matter was set for a conference call.

The Landlord and her Agent (the Agent) attended the conference call hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

Section 59(3) of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

Documents that must be served with the Notice of Dispute Resolution Proceeding Package

"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].”

The Agent testified that the Application for Dispute Resolution and Notice of Hearing were served on the Tenant by Canada Post Registered mail. A Canada post tracking number for the mail sent on June 28, 2018, was provided as evidence of service. The Agent testified that the Application for Dispute Resolution and Notice of Hearing package was sent late as the Landlord did not see the notice the email from this office, advising her the package was ready, and need to be served until 35 days after it this office had been sent.

I find that the Landlord mailed the Application for Dispute Resolution and Notice of Hearing 35 days after Dispute Resolution Proceeding Package had been made available to her by the Residential Tenancy Branch. I find that the Tenant would have been deemed to have received this mailing on July 3, 2018, allowing only 13 days for them prepare for this hearing. I am not satisfied that the Tenant had a sufficient notice period to prepare for and make themselves available to attend this hearing.

I find that the Tenant had not been duly served in accordance with sections 3.1 of the Residential Tenancy Branch rules of procedure. Therefore, I dismiss the Landlord’s application with leave to reapply.

Conclusion

I dismiss the Application for Dispute Resolution with leave to reapply; however, this does not extend any applicable time limits under the legislation. I have not made any findings of fact or law with respect to the Application.

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: July 19, 2018

Residential Tenancy Branch