



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking the return of a security deposit and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and an agent for the Landlord (the “Agent”), both of whom provided affirmed testimony.

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. In the hearing the Agent testified that neither he nor the Landlord were ever served with a copy of the Application or the Notice of Hearing and only became aware of the hearing through an auto-generated e-mail from the Residential Tenancy Branch (the “Branch”) as the Tenant had provided an e-mail address for the Landlord when filing the Application. As a result, the Agent stated that he does not know what the hearing is about and has not had an opportunity to submit any evidence for consideration.

Although the Tenant provided testimony and documentary evidence showing that copies of the Application and Notice of Hearing were sent by registered mail on two separate occasions, the addresses given by the Tenant for service on the Landlord do not match the address for service of the Landlord on the tenancy agreement. Further to this, the Agent testified that the address for the Landlord on the tenancy agreement is correct and that the Landlord does not do business as a landlord at either of the addresses provided by the Tenant. Although the Tenant stated that he obtained these address by phoning the office for the Landlord, he did not provide any documentary evidence from the Landlord or an agent of the Landlord that either of the addresses used are in fact addresses where the Landlord conducts business as a 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].

Further to this, sections 89 of the *Act* states that an Application may only be served on a Landlord by leaving a copy with the Landlord or an agent of the Landlord or by sending a copy by registered mail to the address at which the person carries on business as a landlord.

Given the testimony of the Agent in the hearing, and the fact that no documentary evidence was submitted by the Tenant to substantiate his testimony that the addresses at which he sent the Notice of Hearing and Application are in fact addresses where the Landlord conducts business as a landlord, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that the Landlord has been served with the Application and the Notice of Hearing, in accordance with the *Act* and the Rules of Procedure.

Further to this, I find that the opportunity to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. As the Landlord was not served with the Application and Notice of Hearing I find that they did not have a fair opportunity to know the case against them or to provide evidence in their defense. As a result, the Application is dismissed with leave to reapply. As the Tenant's Application is dismissed, I decline to grant recovery of the filing fee.

Conclusion

The Tenant'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: August 3, 2018

Residential Tenancy Branch