



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 Tenants under the *Residential Tenancy Act* (the “Act”), seeking the return of double their security and pet damage deposits and recovery of the filing fee.

The hearing was convened by telephone conference call and was initially attended by the Landlord and the Tenant, R.V., both of whom provided affirmed testimony. The Landlord’s spouse later attended the hearing.

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. Although both parties attended the hearing on time, the hearing was originally scheduled to be heard by another arbitrator on September 20, 2018, at 1:30 P.M. That arbitrator was unable to attend the hearing and the hearing was subsequently rescheduled to be heard before me on September 21, 2018, at 9:30 A.M. While the Landlord acknowledged that he received a phone call and an e-mail from the Residential Tenancy Branch (the “Branch”) yesterday regarding rescheduling the hearing, he stated that until that time, he had no knowledge of this hearing or the Tenants’ Application.

The Tenant testified that the Application, the Notice of Hearing for the original hearing date and the documentary evidence before me from the Tenants were all sent to the Landlord by registered mail; however, the Tenant did not provide a copy of the registered mail receipt for my review and was unable to provide me with any details in the hearing regarding when this registered mail was sent.

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 the above, rule 3.5 of the Rules of Procedures states that at the dispute resolution hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.

Although the Tenant testified that he served the Application, the Notice of Hearing for the original hearing date and time, and his documentary evidence on the Landlord by registered mail, he could not provide me details about when this registered mail was sent or the registered mail tracking number and he did not provide a copy of the registered mail receipt for my review. In the hearing, the Landlord denied having received any of the above noted documents. As a result, I find that the Tenant has failed to satisfied me, on a balance of probabilities, that the Landlord, who is the Respondent in this matter, has been 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 Landlord was 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 to provide evidence in their defense. As a result, the Application is dismissed with leave to reapply.

Conclusion

The Tenants' 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: September 21, 2018

Residential Tenancy Branch