



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0821149 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 15, 2018 (the “Application”). The Landlord applied for compensation for damage to the rental unit, compensation for monetary loss or other money owed, to recover unpaid rent and for reimbursement for the filing fee. The Landlord sought to keep the security deposit.

The Property Manager appeared at the hearing for the Landlord. The Tenant did not appear. I explained the hearing process to the Property Manager who did not have questions when asked. The Property Manager provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord’s evidence.

The Property Manager testified that the hearing package and evidence were sent on October 17, 2018 by registered mail to a PO Box that the Tenant confirmed was accurate two weeks prior to moving out on September 30, 2018. The Landlord had submitted a customer receipt for the registered mail with Tracking Number 1 on it. I looked this up on the Canada Post website which shows a notice card was left October 17, 2018 and October 23, 2018. The package was unclaimed and returned.

Sections 88 and 89 of the *Residential Tenancy Act* (the “Act”) set out the permitted methods of service for hearing packages and evidence and state:

88 All documents, other than those referred to in section 89...that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

...

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides...

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides...

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides...

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1)...

(j) by any other means of service prescribed in the regulations.

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

...

(c) by sending a copy by registered mail to the address at which the person resides...

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

[emphasis added]

Here, the Landlord sent the hearing package and evidence to a PO Box that the Tenant confirmed was accurate two weeks prior to moving out. The Property Manager testified that the Tenant vacated the rental unit September 30, 2018. When I asked the Property Manager if the Tenant had provided the Landlord with a forwarding address in writing, the Property Manager said the Tenant had not and that the Tenant up and moved with one day notice. The Landlord had not submitted any evidence showing the PO Box used was confirmed by the Tenant to be accurate. Nor did the Landlord submit any evidence showing the PO Box continued to be accurate when the hearing package and evidence were sent.

I am not satisfied that the hearing package and evidence were served on the Tenant in accordance with the *Act*. The package was not sent to the Tenant's residence. Nor was the package sent to a forwarding address provided by the Tenant. These are the only two places where tenants can be served pursuant to section 88 and 89 of the *Act*.

Further, the package was not sent until October 17, 2018. This would have been more than four weeks after the Tenant confirmed the PO Box was accurate. I have no evidence before me of this confirmation. The Tenant did not confirm this in the context of providing a forwarding address. In these circumstances, I am not satisfied the PO Box was a place where the Tenant could be contacted at the time the hearing package and evidence were sent.

I acknowledge that I can deem the hearing package and evidence sufficiently served pursuant to section 71 of the *Act*. However, I find this is appropriate when there is some evidence before me that a respondent received the hearing package and evidence. Here, the Tenant did not appear at the hearing. The Tenant did not submit evidence for the hearing. The Landlord did not submit evidence such as correspondence from the

Tenant showing the Tenant received the hearing package and evidence. The Canada Post website information does not confirm that the Tenant received the package and shows it was returned to the Landlord after two notices were left in relation to the package.

In the circumstances, I am not satisfied of service of the hearing package and evidence. The Application is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 27, 2019

Residential Tenancy Branch