



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP

Introduction

On September 21, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”). The Tenant applied for a monetary order for money owed or compensation for damage or loss, and for an Order for the Landlord to return their personal property. The matter was set for a conference call.

Both Tenants and Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss, pursuant to section 67 of the *Act*?
- Should the Landlord be ordered to return personal property of the Tenants?

Preliminary Matter

At the outset of the hearing, the Tenants testified that they had submitted their evidence for this hearing to the Residential Tenancy Branch, late, on the same date of this hearing. The Tenants testified that their evidence had been submitted late as they had

just finished collecting the document they required for this hearing. The Tenants also testified that they were not able to serve the Notice of Hearing Document to the Landlord, stating that the Landlord had refused to take the documents.

The Landlord testified that had not been served any documents from the Tenants and that he had only known about this hearing, and how and when to attend due to an email he had received from the Residential Tenancy Branch.

The Residential Tenancy Branch Rules of Procedure require an applicant to submit their evidence, to the Residential Tenancy Branch and the respondent, no less than 14 days before the hearing.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I have reviewed the Tenants' application, and I noted that the Tenants had 132 days to prepare and submit evidence in support of their application. I find that this was sufficient time for the Tenants to prepare their cases and submit their evidence to the Landlord and this office, in accordance with the rules of procedure. Therefore, I will not accept the Tenants' late evidence submission into these proceedings.

Additionally, both the Tenants and the Landlord have testified that the Notice of Hearing Documents had also not been served on the Landlord. Section 59 of the Act requires that an applicant serve the Notice of Hearing Document on the Respondent within three days of making their application.

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.

During the hearing, the parties to this dispute offered conflicting verbal testimony regarding the service of the Notice of Hearing Documents. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that would be the Tenants.

In the absence of evidence to prove service, I find that the Landlord had not been duly served, notice of this hearing, in accordance with sections 59 of the *Act* and 3.1 of the Residential Tenancy Branch rules of procedure.

As the Landlord, the Respondent, has attended this hearing and the Tenants, the Applicants, have not met their minimum requirements for service of the documents for these proceedings, I dismiss the Tenants' application without leave to reapply.

Conclusion

I dismiss the Tenants' application without leave to reapply.

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: February 15, 2019

Residential Tenancy Branch