



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on November 7, 2018. The Landlord applied for a monetary order for damages or compensation under the *Act*, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenant by registered mail on November 20, 2018, a Canada post tracking number was provided as evidence of service.

I have reviewed the Landlord's application, and I find that the Notice of Dispute Resolution Hearing documents had been created and provided to the Landlord on November 8, 2018. Section 3.1 of the Residential Tenancy Branch Rules of Procedure sets out the requirements for service of the Notice of Dispute Resolution Hearing documents, stating the following:

Residential Tenancy Branch Rules of Procedure

3.1 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].

I find that the Landlord had until November 11, 2018, to send the Notice of Dispute Resolution Hearing documents to the Tenant. In this case, the Landlord waited until November 20, 2018, to mail the documents to the Tenant at the address for the rental unit. Therefore, I find that the Landlord has not served the Notice of Dispute Resolution Hearing in accordance with the rules of procedure.

I also note that there was a Canada Post labour dispute, with job action ongoing at the time the Landlord sent the Notice of Dispute Resolution Hearing documents to the Tenant. Section 90 of the *Act* determines that a document served by mail is deemed to have been received five days after it is mailed. However, due to the ongoing Canada Post labour dispute at the time the registered mail had been sent, I find the delivery of the registered mail sent by the Landlord would have been delayed and that five days is insufficient to deem that the registered mail had been received.

Additionally, during the hearing the Landlord testified that this tenancy ended as of November 30, 2018, due to a settlement agreement obtained during a Dispute Resolution Hearing that took place on November 22, 2018. The Landlord submitted the file number for the November 22, 2018 hearing, and that file number has been recorded on the style of cause page for this decision.

Due to the combination of the late mailing of the Dispute Resolution Hearing documents by the Landlord, the delay in mail delivery due to the Canada Post Labour Dispute and that fact that the Tenant may have already vacated the rental unit at the time of delivery; I find that it is unclear if the Tenant had been still living in the rental unit at the time the Canada Post attempted delivery of the registered mail from the Landlord.

For my reasons listed above, I find that I am not satisfied that the Tenant has been duly served the notification of this hearing as required, pursuant to section 59 of the *Act*.

Therefore, I dismiss the Landlord application with leave to reapply. This decision does not extend any legislated timelines pursuant to the *Act*.

Conclusion

I dismiss the Landlord's application with leave to reply.

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: March 13, 2019

Residential Tenancy Branch