



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNDL MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for damage to the rental unit unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$9,515.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants attended the hearing. The landlord did not appear, but was represented by an agent. Each was given a full opportunity to be heard, to present affirmed testimony, to make submissions.

Preliminary Issue – Service of Documents

The tenants testified that they received the Notice of Dispute Resolution by registered mail from the landlord in late May, 2019. They testified that shortly thereafter they left for a month-long vacation, returning June 30, 2019. They submitted a screenshot of their flight confirmation showing their travel dates as May 30, 2019 to June 30, 2019.

The tenants testified that, upon their return, they discovered notices from Canada Post advising them that delivery of a package was attempted, but was no longer available for them to pick up from the post office.

The landlord's agent testified she sent the evidence package (the "**Package**") to the tenants by registered mail, and provided a Canada Post tracking number as confirmation.

During the hearing, I entered the tracking number into Canada Posts package tracking website. It showed that the Package was not retrieved by the tenants, that a final 10 day notice for pickup was issued on June 13, 2019, and that on June 28, 2019 the Package was marked as undeliverable. The Package is currently “on hold at a secure facility” in Ontario.

The tenants testified that they emailed the landlord and the landlord’s agent on June 30, 2019, stating:

[landlord’s agent] attempted to serve us some documents by mail on June 6th; which we have not received as we were out of the country. We’re now in Vancouver and able to receive mail.

The landlord’s agent confirmed that the email addresses this message were sent to were her own and the landlord’s. However, she testified that the landlord does not check this email address, and that she has frequent issues with her email account which cause her not to receive some emails. She testified she never received the tenants’ email of June 30, 2019.

The tenants testified that they received no response to their email, and, to date, have received no evidence from the landlord, and are unsure what the specifics of the landlord’s claim against them are.

The landlord’s agent argued that the hearing should proceed as she had complied with the service requirements set at section 89 of the Act, which states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], 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:

[...]

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

She argues that by mailing the Package, she complied with the Act, and the tenants should be deemed to have been served.

The tenants argued that the landlord's application should be dismissed, as the landlord has failed to serve them with the Package.

Policy Guideline 12 states:

The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done. For example, the Supreme Court found in *Hughes v. Pavlovic*, 2011 BCSC 990 that the deeming provisions ought not to apply in that case because Canada Post was on strike, therefore unable to deliver Registered Mail.

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

I find that the tenants were on vacation until June 30, 2019. I find that they did not receive the Package sent to their address by registered mail. I find that they sent an email to the landlord and the landlord's agent's valid email addresses stating that they did not receive the Package, and that neither the landlord nor the landlord's agent replied to this email. I find it unlikely that neither the landlord nor the landlord's agent received this email.

I find it more likely than not that the landlord or his agent saw the email, ignored it, and declined to resend the Package to the tenants. I will not speculate as to their motives for so doing.

Whatever the motives, such inaction is not to be countenanced. If a party is aware with deficiencies in the service of certain documents, it is incumbent upon them to rectify these issues.

Accordingly, I find that it is appropriate to dismiss the landlord's application, with leave to reapply. I decline to make any monetary order in favor of the landlord, and decline to award them their filing fee for this application.

Conclusion

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 30, 2019

Residential Tenancy Branch