



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The tenants attended the hearing. The landlord did not. The tenant SA testified that he served the landlord with the Notice of Dispute Resolution Proceedings package by registered mail on June 13, 2019. He testified the tracking number slip was left at home and he is unable to provide me with it to corroborate his testimony that it was served by registered mail.

Preliminary Issue – Service

An Application for Dispute Resolution requires special rules for service as stated in section 89(1) of the *Act* which requires service by:

- a) by leaving a copy with the person;
- b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- c) by sending a copy by 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;
- 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*].

Rule 3.1 of the Residential Tenancy Branch Rules Of Procedure ("Rules") states:

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].

Rule 3.5 of the Rules state:

At the 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.

Residential Tenancy Branch Policy Guideline PG-12 provides further clarification at section 15:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

Given that the tenant was unable to provide the above material, most notably the tracking number from Canada Post, I am not satisfied the landlord was served with the Application for Dispute Resolution and dismiss the tenants' application with leave to reapply.

Conclusion

The tenant's application is dismissed with leave to reapply. I make no findings on the merits of the application. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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 17, 2019

Residential Tenancy Branch