



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT

Introduction

This hearing was convened in response to an application by the tenant filed June 21, 2019 pursuant to the *Residential Tenancy Act* (the Act) for a Monetary Order to recover the security deposit.

Preliminary issue – Service of Documents

The tenant attended the conference call hearing, however the landlord did not. The tenant stated they sent the Notice of Dispute Resolution Proceeding (Notice of Hearing) and hearing package to the landlord by regular / ordinary mail to the landlord's residential / mailing address. They stated not having received a response from the landlord or otherwise any acknowledgement that the tenant's mail for this matter was received. The tenant did not present evidence that they employed other means to serve the landlord with their hearing package as prescribed by the Act. However, the tenant stated they subsequently sent the landlord all their evidence by e-mail. Lastly, it must be noted that the tenant submitted their evidence to the Branch late, 8 days (versus 14) before the hearing.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

Section 89 of the Act states as follows (**emphasis added**)

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;
- (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*].

Section 89 of the Act deliberately operates to lend evidentiary weight and credibility to the presumption of service if a party is served in accordance with the methods prescribed. I find the tenant did not provide evidence of service in accordance with the Act notifying the landlord of today's hearing. I am not sufficiently satisfied the landlord has knowledge of today's hearing. I am further not satisfied with the tenant's effort to serve the landlord evidence by e-mail as successful in alerting the landlord of an action against them. **Section 88** of the Act – **How to give or serve documents generally**, clearly outlines how evidence must be given if it is not sent with the hearing package.

As a result of all the above, I must **dismiss** the tenant's application, but I do so, *with leave to reapply*.

None of the potential merits of this application were heard.

It must be known that failure to accept documents by a method prescribed within **Section 89** of the Act does not conclusively nullify service; and, that the deeming provisions set out by **Section 90** of the Act apply. It must further be known that it remains available to the parties to mutually resolve the dispute.

Conclusion

The tenant's application is **dismissed**, *with leave to reapply*.

This Decision is final and binding.

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 24, 2019

Residential Tenancy Branch