



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1099523 BC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 07, 2019 (the "Application"). The Landlord sought compensation for monetary loss or other money owed, to recover unpaid rent, to keep the security and/or pet damage deposits and reimbursement for the filing fee.

The Agent attended the hearing for the Landlord. Tenant K.R. attended the hearing with his Support Worker. Tenant K.R. did not appear for Tenant S.K. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Tenant K.R. testified at the outset that he vacated the rental unit prior to Tenant S.K. vacating. Tenant K.R. testified that he vacated approximately a year prior to the hearing. The Agent testified that Tenant S.K. vacated July 31, 2019.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord's evidence.

The Support Worker advised that Tenant K.R. received an email from the Residential Tenancy Branch (RTB) about the hearing but did not receive the hearing package or Landlord's evidence. The Support Worker advised that they called the RTB and obtained the information needed to call into the hearing.

The Agent testified that the hearing packages and evidence were sent by registered mail August 19, 2019. The Agent testified that two packages were sent, one to each of the Tenants. The Agent provided the address the packages were sent to which is noted on the front page of this decision. The Agent testified that the address used was

obtained from the rental application form provided by the Tenants when they were applying to rent the rental unit. The Agent testified that the address is for the Tenants' emergency contact as noted on the rental application form. The Agent did not know who the emergency contact was. The Agent testified that the Tenants did not provide a forwarding address.

Tenant K.R. testified that he does not live at the address used and is not aware of the address as Tenant S.K. completed the rental application form.

I looked the Tracking Numbers up on the Canada Post website which shows the package with Tracking Number 1 was unclaimed and returned to the sender. The website shows the package with Tracking Number 2 was delivered and signed for August 20, 2019 by the person indicated on the front page of this decision. However, the website also shows the package was re-routed due to a processing error and returned to the sender.

Pursuant to rule 3.5 of the Rules of Procedure:

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.

Section 89(1) of the *Residential Tenancy Act* (the "Act") sets out the permitted methods of service for the Application and states:

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...
- (c) by sending a copy by registered mail to the address at which the person resides...
- (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)...

[emphasis added]

Based on the testimony of the Agent, I am not satisfied the hearing packages and evidence were sent to the Tenants' residence or forwarding address. Nor am I satisfied that serving the Tenants at an address for an emergency contact provided on a rental application prior to the tenancy starting complies with section 89(1) of the *Act*.

Given the hearing packages and evidence were not served in accordance with section 89(1) of the *Act*, section 90 of the *Act* does not apply and the Tenants are not deemed to have received the packages.

Pursuant to section 71(2) of the *Act*, an arbitrator can determine that a party has been sufficiently served despite not being served in accordance with section 89(1) of the *Act*. I find this is appropriate when there is clear evidence that the party being served in fact received the documents at issue.

I am not satisfied Tenant K.R. received the hearing package and evidence. Tenant K.R. appeared at the hearing with the Support Worker and the Support Worker advised that Tenant K.R. did not receive the package. This is supported by the Canada Post website information.

In relation to Tenant S.K., I acknowledge that the package was delivered and signed for by the person noted on the front page of this decision. I am not satisfied given the first initial that Tenant S.K. signed for the package. I find it possible that someone related to Tenant S.K. signed for the package given the Agent's testimony that it was sent to an emergency contact noted on the rental application form. Serving a relative of a party is not sufficient. I also note that the Canada Post website information seems to indicate the package was returned to the sender. It is not clear from the Canada Post website information exactly what happened with the package. Tenant S.K. did not appear at the hearing. Tenant S.K. did not submit evidence for the hearing. In the circumstances, I am not satisfied Tenant S.K. received the package.

In the circumstances, I was not satisfied of service.

I heard from Tenant K.R. and the Support Worker about whether Tenant K.R. was prepared to proceed despite the service issue. Tenant K.R. and the Support Worker went back and forth on this issue. Tenant K.R. said he did not know what the hearing

was about. The Support Worker spoke to Tenant K.R. separately and then advised that Tenant K.R. did not want to proceed and did not have enough time to gather evidence.

I was satisfied that it was not appropriate to proceed with the hearing given the following. I was satisfied Tenant K.R. was not properly served with the hearing package and evidence. I was satisfied he did not receive the hearing package and evidence. I was satisfied he did not know the details of the claim. The claim is for \$4,405.54. In the circumstances, I found it would be unfair to proceed.

Given I was not satisfied of service, and given I was satisfied it would be unfair to proceed, I dismissed the Application with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

Conclusion

The Application is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 03, 2019

Residential Tenancy Branch