



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking compensation for monetary loss or other money owed, double the amount of their security deposit, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the two agents for the Landlord (the “Agents”), and both Tenants, all of whom provided affirmed testimony.

The Act and the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing by the Applicant. Although the Agents appeared on behalf of the Landlord in the hearing, they stated that they only became aware of the hearing when they received an auto-generated email from the Residential Tenancy Branch (the “Branch”) reminding them that they have an upcoming hearing and providing them with both the file number and the hearing information.

Branch records indicate that on February 5, 2020, an automatically generated email was sent to the email address for the Landlord entered by the Tenants on their Application reminding them that they have an upcoming hearing and providing them with both the file number and the hearing information. This is a courtesy email that is auto-generated by the online application system when an applicant enters an email address for the respondent when filing their application for dispute resolution with the Branch.

The Agents stated that on February 15, 2020, they contacted the Branch by telephone in response to having received the above noted email, and that they advised the Branch that they were unaware of any hearing. Branch records confirm this phone call.

The Agents stated that they subsequently attended the Branch in person on

February 18, 2020, in order to obtain details about the Application, and that they were subsequently provided with a copy of the Notice of Dispute Resolution Proceeding. Branch records confirm that an agent for the Landlord attended the Branch in person on February 18, 2020, and that they were provided a copy of the Notice of Dispute Resolution Proceeding by email, on that date, at the email address provided for the Landlord by the Tenants in their Application. Having reviewed the Notice of Dispute Resolution Proceeding, I note that it contains the following:

- The file number;
- The name of the Applicants and Respondents;
- The dispute address (the address of the rental unit);
- The hearing information;
- General information for the parties;
- Contact information for both the Applicants and Respondent, as entered by the Applicants (Tenants) when filing their Application;
- Details of the dispute;
- Branch contact information.

The Tenants stated that they served the Notice of Dispute Resolution Proceeding and the bulk of their documentary evidence on the Landlord in two separate registered mail packages at the dispute address on January 2, 2020, and that they sent the remainder of their documentary evidence by registered mail to the dispute address on February 13, 2020. The Tenants provided me with the registered mail tracking information. With the consent of all parties, I logged into the mail service provider's website to check the status of the registered mail. Both registered mail tracking numbers provided by the Tenants for the registered mail sent January 2, 2020, show that the registered mail was sent January 2, 2020, and that notice cards were left on January 3, 2020, and January 6, 2020; however, according to the tracking system, neither package was picked up and they were ultimately returned. Although I verified the registered mail tracking number for the February 13, 2020, package with the Tenants several times, when I entered the tracking number into the mail service provider's tracking system, no tracking information was available.

The Agents denied receipt of the aforementioned registered mail packages, either by themselves or the Landlord. Although the tenancy agreement does not list an address for service for the Landlord, both parties agreed in the hearing that the Tenants were advised in January of 2018, shortly after the end of the tenancy, to use the dispute address for contacting the Landlord. However, the Agents stated that the dispute address was sold by the Landlord in January of 2019 and that the new owner took possession in April of 2019. As a result, the Agents stated that this was no longer a

valid address for service for the Landlord at the time the Tenants sent their registered mail packages and the Landlord therefore never received this registered mail.

The Tenants argued that they filled their Application within the two-year time limit set by the Act, that it is not their responsibility to monitor the Landlord's address for service or the ownership of the dispute address, and that their registered mail should be considered received as it was sent to the Landlord's last known address for service. Further to this, the Tenants argued that the Landlord or Agents must have received their registered mail, as they submitted documentary evidence in response to their claims and evidence, which could not have been made without reference to the documents sent to the Landlord by registered mail.

The Agents countered the Tenants' claims, stating again that the registered mail was never received and pointing to the detailed claim information provided in the Notice of Dispute Resolution Proceeding which they received directly from the Branch on their own initiative, as the source of the evidence from which they based their responses to the Tenant's claims.

Section 59 of the *Act* states the following with regards to the service of the Application on the Respondent:

Starting proceedings

- 59** (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package 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].

3.5 Proof of service required at the dispute resolution hearing

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 Residential Tenancy Branch Rules of Procedure These Rules of Procedure take effect at 4:30 pm PST on March 5, 2020 page 14 Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Section 60 of the *Act* states that if the *Act* does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. As the parties agreed that the tenancy ended sometime in early January 2018, I find that the Tenants were within their right to file their Application on December 24, 2019. However, as stated above, the *Act* and the Rules of Procedure require an Applicant to serve documents on the Respondent in prescribed ways and within specific time periods and to satisfy the Arbitrator in the hearing that they have met the applicable service requirements. Although the Tenants stated that they had sent the required documents by registered mail to the Landlord's last known address for service, their own registered mail tracking information showed that the registered mail was never received by the Landlord. Further to this, the Agents testified that the address the Tenants used for serving the Landlord had been sold by the Landlord in early 2019, and therefore had not been owned by the Landlord in almost a year.

Residential Tenancy Branch Policy Guideline (the "Policy Guideline") 12 states that where a tenant is serving a landlord by Registered Mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord

carries on business as a landlord. Based on the testimony of the parties in the hearing, I am not satisfied that the dispute address was, at the time the registered mail was sent, either the address where the Landlord resides or carries on business as a landlord. Policy Guideline 12 also states that failure to serve documents in a way recognized by the legislation may result in a determination that the party was not properly served with the document.

Section 90 of the *Act* states that unless there is evidence to the contrary, documents that are not personally served are considered to have been received five days after their mailing when sent by registered mail. However, The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done and that 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. Policy Guideline 12 also states that the decision of whether to make an order that a document has been sufficiently served in accordance with the *Act* or that a document not served in accordance with the *Act* is sufficiently given or served for the purposes of the *Act* is a decision for the arbitrator to make on the basis of all the evidence before them.

I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As stated above, the Tenants' own registered mail information shows that the registered mail was never received. Further to this, the Agents testified that the reason it was never received is that the Landlord had sold the property used as the mailing address by the Tenants almost a year prior to the dates that the registered mail was sent.

Although the Tenants argued that the Landlord or the Agents must have received their registered mail in order to have filled their own evidence in response to the Tenants claims and to have sent it to their current address, I disagree. The Agents testified that the evidence they submitted in response to this Application was based solely on the information contained under the section titled Dispute Information in the Notice of Dispute Resolution Proceeding that they themselves obtained from the Branch. They also stated that they similarly received the Tenants address from the applicant contact information listed in the Notice of Dispute Resolution Proceeding, not from the return address of any registered mail. Having read the Notice of Dispute Resolution Proceeding for this matter, I concur with the Agents that their evidence in response to the Tenants claims corresponds directly with the information contained under the section titled Dispute Information. I also agree that the Tenants' contact information was

listed in the Notice of Dispute Resolution Proceeding and find that the express purpose of this information is provide respondents with an address for service for the Applicants.

Based on the above, I am not satisfied that the Tenants served on the Landlord or their Agents, a copy of the Notice of Dispute Resolution Proceeding, including notice of the hearing and a copy of the Application, or the documentary evidence before me for review from them, in accordance with the *Act* or the Rules of Procedure. I am satisfied based on the testimony of the parties in the hearing and the Branch records before me, that had the Branch not sent the auto-generated email to one of the Agents on February 5, 2020, neither the Agents nor the Landlord would have become aware of the dispute. Although the Agents subsequently obtained a copy of the Notice of Dispute Resolution Proceeding from the Branch on February 18, 2020, again, I do not find that this courtesy provided to the Agents by the Branch waives, negates, or in any way reduces the requirements for Applicants to serve these documents on respondents in accordance with the *Act*.

As a result of the above, I find that the Landlord did not have a fair opportunity to know the full case against them or to provide full evidence in their defense as they were not served, either properly or in any other manner, with the Notice of Dispute Resolution Proceeding or any of the documentary evidence before me for review by the Tenants, who are the Applicants in this matter. I therefore dismiss the Tenants' Application with leave to reapply. This is not an extension of any statutory deadline.

Conclusion

The Tenants' Application is dismissed with leave to re-apply. This is not an extension of any statutory deadline.

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 11, 2020

Residential Tenancy Branch