



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 18, 2020. The Tenants applied for the return of their personal property, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenants both attended the hearing and provided testimony. The Landlord did not appear.

The Tenants filed their application for dispute resolution on May 14, 2020. The Tenants stated that they sent the Notice of Dispute Resolution Proceeding and their evidence by regular mail to the Landlord. The Tenants did not recall what day they sent the package, but that it was around a couple weeks ago. The Tenants did not provide any proof of mailing, but stated they mailed it to the Landlord, via regular post.

The Tenants stated that they also went on the internet to find information about the company that owns the building. The Tenants located the name and email of the company, which the agent named on this application works for. The Tenants stated that they got the email for the company on the website, and sent their Notice of Dispute Resolution Proceeding and their evidence to that email address. The Tenants stated they did this a couple of weeks ago. The Tenants stated that they have never emailed the Landlord before, and never received any communication back from the Landlord, either by email, or in writing.

I find it important to note that the Residential Tenancy Branch has recognized the challenges and immense impacts that the COVID-19 pandemic has had on landlords and tenants. As such, the Government has made some changes to assist landlords and

tenants manage through COVID-19. These provisions are in effect during the course of the state of emergency and until further notice.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. However, some of these provisions have been modified, due to the pandemic, and the Director has issued practice directives. For example:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency.

As per the Director's Order, emailed documents will be deemed received as follows:

1. If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;
2. If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.
3. If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.

Although emailing documents to the other party is generally acceptable in the current pandemic, there are some parameters around making the determination that these documents are sufficiently served for the purposes of this application. These parameters are outlined above.

I note the Tenants stated that the Landlord never confirmed receipt, by way of a return email. I further note the Tenants stated that the Landlord never responded at all to their email with their documentation. Also, I note that the Tenants stated they have never emailed the Landlord before, and this is not a method of communication they routinely use to correspond. I do not find the Tenants have sufficiently demonstrated that they meet any of the 3 above criteria, which would allow the documents to be deemed served, by email.

I also note the Tenants stated they sent the Notice of Dispute Resolution by regular mail, around a couple weeks ago, to the Landlord. I note the following portion of the Act which relates to serving an application for dispute:

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].*

I note the Tenants did not have any proof of mailing, and did not send the documents by registered mail. I find there is insufficient evidence that the Tenants served the Landlord in accordance with any of the allowable methods of service under section 89 of the Act. Although email service is a temporary accommodation, to assist parties with service during the pandemic, there are specific parameters around deeming that documents are sufficiently served by email. I find the Tenants have failed to meet those email service parameters, as outlined above.

Ultimately, I do not find there is sufficient evidence that the Tenants have served the Landlord with the Notice of Dispute Resolution, and evidence in any of the methods described above.

Since the Notice of Dispute Resolution has not been sufficiently served, I dismiss the Tenants' application, with leave to reapply.

I encourage the Tenants to utilize either registered mail to the Landlord or if email is preferred, to ensure service via email occurs such that it meets one of the 3 criteria listed above for email service.

Conclusion

The Tenants' application is dismissed, with leave.

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: June 18, 2020

Residential Tenancy Branch