



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Singla Bros. Holdings Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's Spouse, the Tenant's adult child (who also acted as an interpreter), the Landlord, and an agent for the Landlord (the Agent). All testimony provided was affirmed.

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. In the hearing the Landlord and Agent testified that they were not served with notice of the hearing, a copy of the Application, or any documentary evidence from the Tenant. Residential Tenancy Branch (Branch) records indicate that the Landlord contacted the Branch on September 11, 2020, in response to an auto-generated email to the Landlord from the Branch regarding evidence submission deadlines, inquiring about the email as they were unaware of any Application for Dispute Resolution filed against them. The Landlord was provided with a copy of the Notice of Hearing as a result and therefore they and the Agent attended the hearing.

In the hearing the Tenant and those in attendance with them confirmed that the Landlord was not served with a copy of the Application or the Notice of Hearing as they did not understand that there was a requirement for them to do so.

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].

I do not find receipt of the Notice of Hearing by the Landlord from the Branch as a result of an inquiry with the Branch related to an auto-generated email qualifies as service under either section 59 of the Act or rule 3.1 of the Rules of Procedure. The ability for applicants to provide the Branch with the respondent's email during the application process is a courtesy, and in no way changes the applicant's responsibilities for service of the Application, Notice of Hearing, or their documentary evidence on the respondent. Based on the testimony of the parties in the hearing and Branch records, I find that the Landlord has therefore not been served with the Application, the Notice of Hearing, or the evidence before me from the Tenants in accordance with the above noted sections of the Act and the Rules of Procedure.

Further to this, 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 the Landlord was not served with the Application, Notice of Hearing, or the evidence before me, I find that they did not have a proper or fair opportunity to know the case against

them or to provide an adequate defense. As a result, the Application seeking recovery of double the amount of their security and pet damage deposits and compensation for monetary loss or other money owed is dismissed with leave to reapply. This is not an extension of any statutory deadline.

As the Tenant's Application was dismissed for lack of service on the respondent, I decline to grant them recovery of the filing fee.

During the hearing there was a dispute between the parties regarding the proper address for service of the Landlord. Both the Landlord and the Agent confirmed that the proper address for service is the one listed on page one of the tenancy agreement, which I read out loud to the parties during the hearing for clarification. I have also included this address on the cover page for this decision.

For the sake of clarity and in an effort to prevent future service issues, I pointed the parties to the service requirements set out in sections 88 and 89 of the Act, and the deemed service provisions set out under section 90 of the Act. I also advised them that an arbitrator may determine that a document not served in accordance with sections 88 and 89 of the Act is still sufficiently served for the purpose of the Act, pursuant to section 71 of the Act.

Conclusion

The Tenant's Application seeking recovery of double the amount of their security and pet damage deposits and compensation for monetary loss or other money owed is dismissed with leave to re-apply. This is not an extension of any statutory deadline. The Tenant's claim for recovery of the filing fee is dismissed without leave to reapply.

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 18, 2020

Residential Tenancy Branch