



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, RPP, MNRT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67;
- an order for the landlord to return the tenant's personal property, pursuant to section 65; and
- a monetary order for the cost of emergency repairs, under sections 33 and 67.

I left the teleconference connection open until 1:55 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness DP also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, his witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant submitted this dispute resolution application on March 22, 2021. The Notice of Dispute Resolution (the application) is dated March 29, 2021.

The tenant affirmed he served the application by email. The tenant does not know when he sent the email. Later the tenant stated he served the application by email on June 06, 2021. The tenant submitted into evidence emails sent to the landlord before this dispute resolution application was submitted.

Section 89(1) of the Act states:

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];
- (f) by any other means of service provided for in the regulations.

Rule of Procedure 3.5 states that the applicant must be prepared to demonstrate that the respondent was served the application.

Based on the tenant's vague testimony, I find the tenant failed to prove, on a balance of probabilities, that he served the application by email.

The tenant testified he attempted to serve the application in person on June 21, 2021, but the landlord did not open the door. On June 22, 2021 the tenant served the application by registered mail.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. The landlord is deemed to have received the application on June 27, 2021, in accordance with section 90(a) of the Act.

Rules of Procedure 3.1 and 3.14 state:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) 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].

[...]

3.14 Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **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.**

(emphasis added)

Based on the foregoing, I find, on a balance of probabilities, that the tenant did not serve the application within the allowed timeframe, as the landlord is deemed to have received the application on June 27, 2021, less than 14 days before the hearing.

Conclusion

I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of the timeline to apply.

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: July 07, 2021

Residential Tenancy Branch