



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST PLACEMENT AND DEVELOPMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

This hearing was scheduled to deal with a tenant's application for return of the security deposit and monetary compensation for damages or loss under the Act, regulations, or tenancy agreement.

The tenant appeared and was affirmed. The tenant indicated he was recording the teleconference call at the outset of the hearing; however, the tenant asked if he was allowed to record, to which I informed him he was not. The tenant affirmed that he had turned off the recording device.

There was no appearance on part of the landlords despite leaving the teleconference call open at least 15 minutes.

Since the landlords did not appear, I explored service of hearing materials upon the landlords.

The tenant testified that he sent an Xpresspost package to the landlords, at the rental unit address, and the service address appearing on the tenancy agreement, within one week of filing the Application for Dispute Resolution and that the Xpresspost packages were not returned to him. I noted that the tenant had not provided any registered mail receipts to demonstrate service of the proceeding package. I asked the tenant if he had the receipts with him and he stated he did not. I asked the tenant if he could provide me with the tracking numbers and he said he could not at this time.

The tenant had provided an Xpresspost receipt and tracking information for a package he sent on December 29, 2021. I asked the tenant what he sent on December 29, 2021 and he said it was his evidence. The package mailed on December 29, 2021 was

delayed according to the Canada Post tracking information and still not delivered as of January 12, 2022.

I asked the tenant why he waited so long to send his evidence to the landlords and the tenant responded that he has been very stressed about this matter and that he has a busy life. The tenant also stated that he had difficulty in serving the landlords as the service address appearing on the tenancy agreement appears incomplete or invalid.

The tenant asked for an adjournment to accommodate his lack of proof of service for the proceeding packages and late service of evidence. The tenant suggested that I should grant the adjournment because the landlord is a professional landlord and he is only a "simple person".

Section 59 of the Act provides that an Application for Dispute Resolution must include the full particulars as to the matter under dispute and the Application for Dispute Resolution must be served upon the other party within three days. This application was filed by the tenant in June 2021 and the proceeding package was provided to the tenant on July 13, 2021. Accordingly, the tenant should have sent his hearing package to the landlords, and all of the particulars of the dispute, and available evidence within three days of that.

Section 89 provides for the ways an Application for Dispute Resolution and other required documents must be served upon the respondent. Registered mail is a permissible method of service under section 89.

Where a respondent fails to appear at the hearing, the applicant bears the burden to prove service occurred as required under the Act.

Rule 3.5 of the Rule of Procedure provides for the burden to prove service:

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 and all evidence as required by the Act and these Rules of Procedure.

Residential Tenancy Policy Guideline 12: Service provisions also provides information and policy statements with respect to service obligations. With respect to service by registered mail, the policy guideline provides, in part:

Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. This includes Express post if the signature option is used. Parties using Registered Mail or Express Post should obtain a copy of the proof of delivery from Canada Post and submit that document as proof of service. This can be obtained from Canada Post's website. A screen shot or picture of the information is sufficient.

15. PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Proof of service by Registered Mail or Express Post with signature option should include the original Canada Post Registered Mail/Express Post receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

In reviewing the proof of service of materials mailed on December 29, 2021 I note that I can see what appears to be the tenant's written submissions describing the matter under dispute, in detail, and providing a breakdown of amounts claimed. This information should have been provided with the proceeding packages, not days before the hearing.

I find the tenant failed to meet his burden to satisfy me that the proceeding packages were sent to the landlords within time and in a permissible manner. The tenant had not provided registered mail receipts for packages sent to the landlords in July 2021 and the tenant was unable to provide the date of mailing the Xpresspost or the tracking numbers at the hearing. As provided in Policy Guideline 12, adjournments to prove service are given in unusual circumstances. Having stress and a busy life is not unusual and I do not grant an adjournment in order for the tenant to prove service of the proceeding packages for the reasons he provided.

Further, I find that mailing documents to the landlord on December 29, 2021 for today's hearing to be very late considering the tenant initiated the proceeding in June 2021. Under the rules of Procedure, evidence available at the time of filing is to be served with the proceeding package. If the evidence is not available at that time, then it is to be served as soon as possible but no later than 14 clear days before the hearing date [Rules 3.11, 3.13 and 3.14 of the Rules of Procedure].

The Canada Post information provided by the tenant shows that the expected delivery date for the Xpresspost mailed on December 29, 2021 was January 4, 2022. While I appreciate an unanticipated event delayed delivery even further, I find that had the landlords received the materials on the expected delivery date of January 4, 2022 the materials would have been received less than 14 clear days before the hearing. Therefore, I was not prepared to admit the tenant's documentation that was sent to the landlords on December 29, 2021.

As to the tenant's request for adjournment, I declined to grant an adjournment. Rule 7.9 of the Rules of Procedure provides the criteria I must consider in deciding to grant an adjournment.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party

[My emphasis underline]

I was of the view the tenant has had several months to provide the proof of service for the proceeding packages and to serve evidence to the landlord in a timely manner, especially considering he initiated the proceeding in June 2021. As such, I find the tenant's request for adjournment stems entirely from the tenant's negligence to fulfill his obligations to serve and prove service as an applicant. Therefore, I declined to grant an

adjournment and **I dismiss his Application for Dispute Resolution with leave to reapply**.

I informed the tenant that there is a two year statutory limit for making an Application for Dispute Resolution.

I also suggested the tenant familiarize himself with the dispute resolution proceeding procedures and may wish to seek assistance of legal counsel or an advocate familiar with tenancy proceedings before re-applying.

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: January 13, 2022

Residential Tenancy Branch