



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEWPORT VILLAGE COURTENAY DEVELOPMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Code MNSDB-DR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* application regarding the above-noted tenancy. The tenant applied for an order for the landlord to return the security deposit, pursuant to section 38.

I left the teleconference connection open until 2:01 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. 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 and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands the parties are not allowed 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 \$5,000.00."

The tenant served the notice of dispute resolution and the evidence to the landlord via registered mail on October 15, 2021. The tenant served the notice of hearing and the interim decision via registered mail on November 21, 2021.

The tenant stated he mailed both packages to an address in Burnaby, B.C. Later the tenant testified he believes he mailed the packages to the landlord's address *3*. Then the tenant said he mailed the packages to the landlord's address *3*, as this is the address on the move out inspection. The application indicates the landlord's address is

5. The addresses and the tracking numbers are recorded on the cover page of this decision.

The tenancy agreement indicates the landlord's address for service is *5*. The handwritten move out inspection form contains an address for service. The tenant affirmed he may have read the address for service wrong.

The tenant stated that Canada Post delivered the packages to the landlord.

Section 89(1) of the Act states:

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

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

I find the landlord's address on the move out inspection is not clear. The address on the tenancy agreement and on the application is *5*. The tenant believes he mailed the packages to the address *3*.

Based on the tenant's vague testimony, I find the tenant did not prove he served the notice of dispute resolution, the notice of hearing, the evidence and the interim decision (the materials) to the address at which the landlord carries on business as a landlord.

Thus, I find the tenant did not serve the materials in accordance with section 89(1) of the Act.

Rule of Procedure 3.1 states:

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].

(emphasis added)

As the tenant did not serve the materials in accordance with section 89(1) of the Act, I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of the timeline to apply.

Conclusion

I dismiss the tenant's application with 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: June 10, 2022

Residential Tenancy Branch