



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, OPM**

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on February 24, 2022 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- an order to retain the security deposit; and
- an order of possession based on a Mutual Agreement to End Tenancy.

The Landlords attended the hearing at the appointed date and time. At the start of the hearing, the Landlords stated that they served the Tenant with the Notice of Hearing and documentary evidence by Registered Mail. The Landlords were unable to recall what date they sent the package to the Tenant and could not provide the Registered Mail Tracking information in support.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedures (the "Rules of Procedure") 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].

Rule of Procedure 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 Proceeding Package and all evidence as required by the *Act* and the Rules of Procedure.

In this case, the Landlords provided no documentary evidence to support that the Respondent was served in accordance with the *Act*. Furthermore, the Landlords were unable to provide the tracking number during the hearing, to confirm service of the above mentioned documents. As the Tenant did not attend the hearing, and I am unable to confirm that they were sufficiently served, I dismiss the Landlords' Application WITH leave to reapply.

The Landlords stated that the Tenant did not provide their forwarding address to the Landlords. Should service according to Section 89 of the *Act* not be achievable, an application for substituted service may be made at the time of filing the application for dispute resolution or at a time after filing.

In these cases, the party applying for substituted service must be able to demonstrate two things:

- that the party to be served cannot be served by any of the methods permitted under the Legislation, and
- that there is a reasonable expectation that the party being served will receive the documents by the method requested.

It shall also be noted that according to Section 39 of the *Act*; a landlord may retain the security deposit if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Conclusion

The Landlords provided insufficient evidence to confirm that they served the Tenant with the Notice of Hearing and documentary evidence in accordance with the *Act* and Rules of Procedure. As such, the Landlords' Application is dismissed 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 07, 2022

Residential Tenancy Branch