



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- return of the Tenants' security deposit in the amount of \$2,700.00 pursuant to section 38.1; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenants attended this hearing and gave affirmed testimony.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 1:45 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenants and I were the only ones who had called into the hearing.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

According to Rule 3.1 of the Rules of Procedure, the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch or within a different period specified by the director, serve each respondent with copies 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) any fact sheets 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].

Section 89(1) of the Act states that 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.

(emphasis underlined)

Rule 3.5 of the Rules of Procedure further states:

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 these Rules of Procedure.

The Tenants submitted a picture of a package addressed to the Landlord stamped July 17, 2022. However, the Tenants did not recall whether the package was sent to the Landlord via registered or ordinary mail. The Tenants were unable to provide a

registered mail tracking number for the package. The Tenants were unable to provide evidence that the Landlord had confirmed receipt.

Under these circumstances, I am unable to conclude on a balance of probabilities that the Landlord was served with this application for dispute resolution in accordance with section 89(1) of the Act. Therefore, I dismiss the Tenant's application with leave to re-apply due to insufficient proof of service. If the Tenants wish to proceed with their claim, a new application will need to be submitted.

Conclusion

The Tenants' claim for return of the security deposit is dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limits.

The Tenants' claim for reimbursement of the filing fee is dismissed without leave to re-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: March 20, 2023

Residential Tenancy Branch