



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage to the rental unit; and to recover the fee for filing their Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of his security deposit and to recover the fee for filing his Application for Dispute Resolution.

The Tenant did not attend the hearing on January 07, 2011. At that hearing the male Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail to the service address noted on the Landlord's Application for Dispute Resolution, on November 11, 2010. The Landlord submitted no evidence to corroborate this statement. The Tenant submitted documents in which he cited the file number for the Landlord's Application for Dispute Resolution, which causes me to conclude that the Tenant has received copies of the Application for Dispute Resolution and Notice of Hearing that the Landlord contends were mailed to him. On this basis, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the original hearing. The hearing on January 07, 2011 proceeded in the absence of the Tenant.

The male Landlord stated that the Tenant did not serve them with a copy of his Application for Dispute Resolution and the Tenant has not served them with any evidence in regards to these proceedings. He stated that they were unaware that the Tenant had initiated a dispute resolution proceeding.

The Landlord was not represented at the reconvened hearing on January 27, 2011. The Tenant was in attendance at the reconvened hearing on January 27, 2011.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to compensation for damages to the rental and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Landlord is entitled to the return of his security deposit and to the rental and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence Submitted at the Original Hearing

The male Landlord stated that the Tenant assumed possession of the rental unit on September 01, 2009 and that he vacated the rental unit on September 30, 2010. He stated that the Landlords and the Tenant entered into a written tenancy agreement for the period between September 01, 2009 and August 31, 2010, for which the Tenant agreed to pay monthly rent of \$4,600.00. He stated that they entered into another written tenancy agreement for the period between September 01, 2010 and September 30, 2010, for which the Tenant agreed to pay monthly rent of \$4,200.00.

The male Landlord stated that the Tenant paid a security deposit of \$2,300.00 on September 01, 2009. He stated that \$1,500.00 of the security deposit was returned to the Tenant, via on-line transfer, on October 25, 2010 and \$800.00 of the security deposit was returned to the Tenant, via on-line transfer, on October 26, 2010. The Landlord submitted documentation from TD Canada Trust that corroborates this statement.

The male Landlord stated that a Condition Inspection Report was completed on September 01, 2009, a copy of which has not been submitted in evidence. He stated that the parties agreed to meet at 10:00 a.m. on September 30, 2010 for the purposes of completing a Condition Inspection Report at the end of the tenancy; that at approximately 8:00 a.m. on September 30, 2010 a text message was sent to the Tenant advising him that the Landlord could not meet at the pre-arranged time; that the Tenant did not respond to that text message; that the Landlord sent another text message arranging to meet at 4:00 p.m. on September 30, 2010; and that the Tenant did not attend the meeting at 4:00. The Landlord submitted no evidence to corroborate the testimony that these text messages were sent.

The male Landlord stated that the Tenant has never provided them with a forwarding address.

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The male Landlord stated that they submitted photographs that support their claims for compensation to the Residential Tenancy Branch, however those photographs were not available to me at the time of the hearing on January 07, 2011. During this hearing I determined that these photographs are highly relevant to the issues in dispute and I determined that the matter should be adjourned, pursuant to rule 11.6 of the Residential Tenancy Branch Rules of Procedure. The Landlords were advised that the hearing would be adjourned, that the Residential Tenancy Branch would mail a Notice of Reconvened Hearing, in which they would be advised of the time and date of the reconvened hearing, and that they would be expected to attend at the reconvened hearing.

I was unable to locate the Landlord's photographs at the conclusion of the hearing on January 07, 2011 and I therefore rendered an interim decision on January 11, 2011, in which I directed the Landlord to submit a duplicate copy of the photographs that were allegedly submitted by the Landlord.

A package of evidence, including photographs, was provided to me on January 20, 2011, with a note indicating that they had been incorrectly filed by the Residential Tenancy Branch.

Background and Evidence Submitted at the Reconvened Hearing

The Tenant stated that he had been served with the Landlord's Application for Dispute Resolution and the Notice of Hearing for January 07, 2011 but he understood he did not need to attend that hearing because it would be heard jointly with his Application for Dispute Resolution at a later date.

The Tenant stated that he sent his Application for Dispute Resolution and the Notice of Hearing to the rental unit, via registered mail on, on January 02, 2011. He stated that he knows the Landlord is not residing at the rental unit but it is the Landlord's service address that was provided on the tenancy agreement.

The Tenant was reminded that he had acknowledged receipt of the Landlord's Application for Dispute Resolution, which had been mailed to him in November of 2010, on which the Landlord had provided him with a service address that is different from the address of the rental unit. At the hearing the Tenant stated that he had not noticed the new service address on the Landlord's Application for Dispute Resolution.

Analysis

The reconvened hearing was scheduled for 9:00 a.m. on January 27, 2011 and by 9:10 a.m. the Tenant had appeared, but the Landlord had not appeared. By failing to attend the reconvened hearing, I find that the Landlord failed to diligently pursue the Landlord's Application for Dispute Resolution and I therefore dismiss the Landlord's Application for Dispute Resolution, without leave to reapply. The Landlord retains the right to file a Request to Review this decision if the Landlord was unable to attend the reconvened hearing for reasons that could not be anticipated and were beyond the Landlord's control.

The purpose of serving an Application for Dispute Resolution and a Notice of Hearing is to notify the Respondent that a dispute resolution proceeding has been initiated. The Landlord had the burden of proving that the Tenant was aware that the Landlord had initiated a dispute resolution proceeding prior to the start of the hearing on January 07, 2011, as the Tenant did not attend the original hearing. As previously stated, the Landlord has established proper service. The Tenant has the burden of proving that the Landlord was aware that the Tenant initiated a dispute resolution proceeding before I can consider the merits of the Tenant's Application for Dispute Resolution, as the Landlord did not attend at the reconvened hearing.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (b) by leaving a copy with an agent for the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or carries on business as a landlord; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

No evidence was submitted to establish that the Landlord or an agent for the Landlord was personally served with the Application for Dispute Resolution and the Notice of Hearing, and I therefore I cannot conclude that the Landlord was served in accordance with section 89(1)(a) or 89(1)(b) of the *Act*.

The evidence shows that the Tenant sent copies of the Application for Dispute Resolution and the Notice of Hearing to the rental unit. The Tenant submitted no evidence that causes me to conclude that the Landlord is residing at that address or

that the Landlord actually carries on business at the rental unit. The evidence shows that the Landlord has provided the Tenant with an updated service address since the Landlord advised the Tenant that the Landlord could be served documents at the rental unit, and I find that the Tenant should have served the Landlord at that address. For these reasons, I cannot conclude that the Application has been sufficiently served pursuant to section 89(1)(c) of the *Act*.

No evidence was submitted to establish that the director authorized the Tenant to serve the Application for Dispute Resolution to the Landlord in an alternate manner, therefore I cannot conclude that the Landlord was served in accordance with section 89(1)(e) of the *Act*.

As the Landlord denied receiving the Tenant's Application for Dispute Resolution at the hearing on January 07, 2011 and the Tenant submitted no evidence to cause me to conclude that the Landlord has received the Application for Dispute Resolution, I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Tenant has failed to establish that the Landlord was served with proper notice of this hearing, I dismiss the Tenant's Application for Dispute Resolution, with leave to reapply.

Conclusion

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 28, 2011.

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