



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for the return of all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

The landlord testified that he received the tenant's application and notice of hearing on January 5, 2011, by regular mail. The landlord stated that he was unable to properly prepare and file a cross application for damages.

The landlord questioned why the tenant's application dated October 27, 2011, was served two months after being filed.

The tenant testified he was only required to give the landlord five days notice of the hearing and was not going to give the landlord any more notice than what was required.

The tenant testified that he sent the package regular mail.

Analysis

The tenant filed his application for dispute resolution on October 27, 2011, and was given a package which included the notice of hearing. At that time the tenant was given verbal and written instructions by the Residential Tenancy Branch as to the required services provision.

Section 59 of the Act states - Starting proceedings

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

I find the tenant did not service the application for dispute resolution and notice of hearing within three days of making his claim and purposely delayed service to ensure the landlord could not properly prepare for the hearing.

Section 89 of the Act states - Special rules for certain documents

89 (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*]

I find the tenant did not serve his application for dispute resolution as required by the Act. The evidence of the parties was the package was sent regular mail.

The tenant has not complied with Sections 59 and 89 of the Act. Therefore, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed without 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: January 13, 2012.

Residential Tenancy Branch