



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the tenant for an order for the return of his security deposit.

Issue to be Decided

Has the landlord been properly served with the application for dispute resolution?

Background and Evidence

The tenant testified that he had not served the landlord with the application for dispute resolution and notice of hearing, but had sent her text messages to which she had not responded.

Analysis

The applicant is required to serve the respondent with his application for dispute resolution and notice of hearing so she is fully aware of the claim against her and can participate in the hearing. Section 89 of the Act does not recognize text messages as an adequate means of service and I find insufficient evidence to show that the landlord has actual knowledge of the claim and of the hearing. For this reason, I dismiss the claim with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

This application is the tenant's third claim for the return of the security deposit. For each application, the tenant has provided evidence showing that he is unable to pay the filing fee and the fee has been waived. The first two hearings were set for May 4, 2011 and July 21, 2011. The tenant did not attend either of those hearings.

Section 72(1) of the Act gives me discretion to order the repayment of a filing fee to the director. I find that the tenant has repeatedly made applications and set up hearings without having first ascertained the landlord's address for service, which has resulted in

a misuse of time and resources of the Residential Tenancy Branch. Although the tenant has been granted leave to reapply, I find it appropriate to order that he not be permitted to reapply until he has repaid the three filing fees which were waived for the May 4, 2011, July 21, 2011 and May 7, 2012 hearings. When the tenant has repaid the \$150.00 in fees which have been waived for these hearings, he is free to apply for another fee waiver to make another application.

Conclusion

The claim is dismissed with leave to reapply. The tenant must repay \$150.00 in waived filing fees before a further application will be accepted by the Branch.

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: May 07, 2012

Residential Tenancy Branch