



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, O, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The tenant testified that he completed the Application for Dispute Resolution on line and he served the three documents the Residential Tenancy Branch provided on the Landlord. The landlord testified that he was not provided a copy of the Tenant's Application for Dispute Resolution. I asked the tenant to identify the documents he was given by the Branch and those documents did not include the Tenant's Application for Dispute Resolution. The tenant stated he does not have a copy of the Tenant's Application for Dispute Resolution as it was not provided to him by the Branch.

The Tenant's Application for Dispute Resolution identifies a claim against the landlord in the sum of \$19,085. This is a significant claim. The landlord testified he received a copy of the hearing letter and talked to someone from the Branch but was not aware of the monetary claim being made by the Tenant.

Section 59(3) of the Residential Tenancy Act provides as follows:

Starting proceedings

59 (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.

Subsection 59(3) does not apply as it deals with hotel tenants.

One of the fundamental principles of the rules of natural justice is that a respondent have sufficient notice of the claim that is being made against him. To proceed with the hearing where the applicant did not provide the respondent with a copy of the Application for Dispute Resolution would result in a denial of natural justice. Further, the Act provides that 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 do not accept the submission of the tenant that the blame lies wholly with the Branch. The hearing package materials received by the Tenant set out the requirements of serving the Application for Dispute Resolution on the other side. The tenant should have been aware that he had failed to comply with the requirements if he had read that material. While there is authority for an arbitrator to extend the time for service in my view it is not appropriate in this case. The failure to serve an Application for Dispute Resolution goes to the essence of the hearing process.

In the circumstances I determined that it was appropriate to dismiss the claim with liberty to re-apply. I have not made any decisions on the merits. Liberty to reapply is not an extension of any applicable limitation period.

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: August 02, 2013

Residential Tenancy Branch