



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of his security deposit and for recovery of the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the applicant complied with his requirements under the Act of service of the Application for Dispute Resolution, hearing package and notice of hearing (the Hearing Package)?

If so, is the tenant entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties was that this tenancy began on August 1, 2004, ended on October 31, 2011, monthly rent was \$890, and the tenant paid a security deposit of \$445 at the beginning of the tenancy.

The landlord raised the issue of whether or not the tenant filed his application within the required time frame, as she alleged that it was more than two years after the tenancy ended that this matter has come forth. The landlord alleged that due to the passage of time, more than two years, they have destroyed their documents relating to this tenancy.

The tenant filed his application for dispute resolution on October 29, 2013 and testified that he thought the landlord was served with his Hearing Package on November 2, 2013. The tenant, when questioned, could not provide clear testimony or any physical proof of the method and date of service.

The landlord provided documentary evidence, which was the envelope containing the tenant's Hearing Package, showing that the tenant served the landlord with his application and hearing package by regular mail on November 20, 2013, as shown by the Canada Post postmark. The landlord also submitted that she did not receive the tenant's application until November 23, 2013, as he mailed the documents to the incorrect address.

Analysis

Section 59(3) of the Act states 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, in this case the application was made on October 29, 2013. The hearing file shows that the tenant was sent the Hearing Package on October 30, 2013, via emailed transmission, as his application was made on-line.

I accept the landlord's evidence that the tenant served her with his Hearing Package by mailing the documents on November 20, via regular mail.

I therefore find that service of the tenant's application and Notice of Hearing were not effected in accordance with section 59(3) of the *Residential Tenancy Act* (the Act) which stipulates that notices of dispute resolution must be served to the respondent within 3 days of filing the application, in this case, October 30, 2013, when the tenant was given the hearing package with instructions. [Emphasis added]

I additionally find that service of the hearing documents was not done in accordance with section 89(1) of the Act which requires that an application for dispute resolution be served upon the respondent (the landlord in this case) in person, by leaving a copy with an agent of the landlord, by registered mail to the address at which the person resides,

or if a landlord, by registered mail to the address at which the person carries on business as a landlord. [Emphasis added]

I therefore find that the tenant failed to comply with sections 59(3) and 89(1) of the Act regarding service of his application to the respondent.

I also note that the tenant failed file any evidence with his application as required under 3.4 of the Rules and did not attempt to serve evidence until 2 business days prior to the hearing, when the evidence was sent via facsimile to the Residential Tenancy Branch ("RTB"). The tenant's evidence would therefore have been excluded from consideration as he has not complied with the Rules.

As the tenant has not been successful with his application, I decline to award the tenant recovery of his filing fee costs.

Conclusion

The tenant's application is dismissed. Although under other circumstances the application would be dismissed with leave to reapply, this tenancy ended on October 31, 2011, and the tenant will therefore be considered to be barred from filing another application pursuant to section 60(1) of the Act.

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: February 20, 2014

Residential Tenancy Branch

