



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference. The hearing was originally convened on January 15, 2014 and then reconvened on March 3, 2014 and was attended by the landlord; her agent; the tenants and their agent on both occasions.

At the original hearing the tenants testified that they had not received the landlord's evidence that she had mailed by registered mail on January 7, 2014. The landlord confirmed in her testimony that she had served this evidence to the tenants at the address on the landlord's Application for Dispute Resolution.

The tenants testified that since they had received the landlord's Application for Dispute Resolution and the notice of hearing documents in October 2013 they had since moved to a new address and had not received any of the landlord's evidence.

Based on this submission I ordered the hearing to be adjourned for the landlord to re-serve the tenants with her evidence, as soon as possible.

Residential Tenancy Branch Rule of Procedure 3.1 states that together with a copy of the Application for Dispute Resolution the applicant, in this case the landlord, must serve the respondent, in this case the tenants, with copies of, among other things, the details of the monetary claim and any other evidence the applicant intends to rely upon.

Rule 3.5 states that for evidence not available at the time the Application was submitted to the Residential Tenancy Branch the applicant must serve the respondent as soon as possible and at least 5 days prior to the prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between.

This requirement means that the respondent must have the evidence at least 5 days prior to the hearing and as such, depending on the method the applicant chooses to serve the respondent by will determine the date by which the service must be

completed. In this case, the landlord served the tenants with her evidence by registered mail. As the deeming provision under the *Act* states that items sent by registered mail are deemed to be received 5 days after they are mailed the applicant must add an additional 5 days to the timeline to ensure meeting the requirements of Rule 3.5.

In the case before me the original deadline to meet the Rule 3.5 requirement prior to the January 15, 2014 hearing would have been that the tenants had received the landlord's evidence by January 8, 2014. However, as the landlord only put them in the mail on January 7, 2014 and did not allow for the 5 days deemed served the landlord's evidence it would have been considered late for that hearing.

In addition, because the landlord did not serve her evidence to the tenants at the time she served them with the hearing documents and the tenants had moved there was no way that the tenants could receive the landlord's evidence.

During the reconvened hearing the landlord's agent testified that the tenants had lied when they said that they had not received the landlord's evidence because the landlord had additional evidence showing the tenants had signed for the receipt of the documents in October 2013.

However, as noted above the documents received by the tenants in October 2013 were the notice of hearing documents and the landlord's Application. The package received in October 2013 did not include the landlord's evidence because, again as noted above, the landlord did not serve the tenants with her evidence until January 7, 2014.

In relation to the landlord's re-service of the evidence as I ordered on January 15, 2014 the landlord testified that she served the tenants with her evidence on February 24, 2014 by registered mail. The tenant acknowledged receipt of the landlord's evidence on February 27, 2014.

While the landlord submits that she had to wait to serve the evidence because she was awaiting additional evidence that she received in February. As the proceeding had already begun and the adjournment had been granted solely for the landlord to "re-serve" her existing evidence and because the landlord did not indicate in the original hearing that she was waiting for additional evidence, I made no rulings or orders that would allow the landlord to submit additional evidence.

Therefore the landlord had no reason to wait to re-serve her evidence. In addition, I note that the landlord, even if I had ordered that should could wait to re-serve the original evidence and based on the fact that she used registered mail she would have had to re-serve the evidence in manner that would ensure that the tenants had received the evidence at least 5 days prior to the hearing, which would be by February 21, 2014.

And to ensure the tenants had received the evidence on this date by registered mail the landlord was required to have sent it by February 16, 2014. As the landlord failed to re-serve her evidence immediately after the original hearing and failed to comply with the

required deadlines to ensure the tenants received the evidence in accordance with the Rules of Procedure I find the tenants' ability to respond to the landlord's evidence has been prejudiced.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for damage to the property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Conclusion

Based on the landlord's failure to serve the tenants with her evidence in accordance with my orders and the Rules of Procedure I dismiss the landlord's Application in its entirety with 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: March 04, 2014

Residential Tenancy Branch

