



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The landlord did not attend this hearing, although I waited until 1351 in order to enable the landlord to connect with this teleconference hearing scheduled for 1330. The tenants attended the hearing.

The tenant JM testified that the tenants served the landlord with the dispute resolution package on 23 December 2014 by registered mail. The tenants filed their application on 23 December 2014, but the Notice of Dispute Resolution Hearing for this matter is dated 29 December 2014. It would have not been possible for the tenants to serve the landlord with the dispute resolution package on 23 December 2014.

I asked the tenants to provide me with a tracking number for the mailing. The tenants did an extensive search and found a receipt for a registered mailing. That registered mailing was dated 10 March 2014. This is also too early to have included the Notice of Dispute Resolution Hearing.

As there is much uncertainty around the date of service and the tenants were unable to provide me with a tracking number for the mailing, I am unable to find that the tenants have shown, on a balance of probabilities, that they served the landlord with the dispute resolution package in accordance with section 89(1) of the Act.

It may be helpful for the tenants to review the following information before making their next application:

On the Notice of a Dispute Resolution Hearing, general information #1 sets out:

Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing.

The Rules of Procedure set out:

Evidence any type of proof presented by the parties at a dispute resolution proceeding in support of the case, including:

- Written documents, such as the tenancy agreement, letters, printed copies of emails, receipts, pictures and the sworn or unsworn statements of the witnesses;
- Photographs, video recordings, audio recordings;
- Oral statements of the parties or witnesses given under oath or affirmation.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

The Act sets out:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit....

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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;...

This information is non-exhaustive, but provides a starting place for the tenants.

On the basis that the tenants have failed to show that the landlord was served in accordance with subsection 89(1) of the Act, I dismiss the tenants' application with leave to reapply.

Leave to reapply is not an extension of any time limits.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 20, 2015

Residential Tenancy Branch

