



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1355 in order to enable the tenant to connect with this teleconference hearing scheduled for 1300. The landlord RS appeared (the landlord). The landlord confirmed that he had authority to act on behalf of both landlords. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Dispute Resolution Package

This application was filed 5 January 2015.

The landlord testified that the landlords served the tenant with the dispute resolution package on 31 March 2015 by registered mail. The landlord provided me with a Canada Post customer receipt. This tracking number showed that the mailing had not yet been received by the tenant. This mailing was sent to a post office box. The landlord testified that the mailing address was provided by the tenant as a forwarding address in writing. I was not provided with a copy of the letter.

The landlord explained that the dispute resolution package was inadvertently sent to an address abroad. The package was returned to the landlords sometime later. When the

landlords realized the error, they took steps to send the package to the tenant's address; however, this did not occur until 31 March 2015.

Section 59 of 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 three days of making it, or within a different period specified by the director. In addition, Rule 3.1 of the *Residential Tenancy Rules of Procedure* provides that the notice of dispute resolution hearing must be served on the respondent together with the Application for Dispute Resolution. However, the Act does not specify any particular consequences or penalty for failing to serve such documents within the prescribed time limit.

Although the late service of the Application for Dispute Resolution does not automatically mean that a hearing will not proceed, there may be some circumstances where administrative fairness requires that a respondent be granted more time to prepare for a hearing.

On the basis of the evidence provided by the landlord, the dispute resolution package was served many weeks after the time it was required to be served by the landlords. Further, the landlords have not provided me with sufficient evidence that the address at which they served the tenant was an address that met the requirements of section 89 of the Act. In this case, the tenant has not been adequately served with notice of this hearing. As a result the landlords' application is dismissed with leave to reapply.

Conclusion

The landlords' application is dismissed with leave to reapply.

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: April 17, 2015

Residential Tenancy Branch

