



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, MNDC, FF

Introduction

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

- a monetary order for unpaid rent, damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although the 1:30 pm teleconference continued until 2:45 pm. The landlord and her son, as assistant attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that the tenant had been served with her Application for Dispute Resolution with Notice of Hearing and all evidence packages on May 1, 2015. Based on the evidence provided by the landlord for hearing, the earliest date that any evidentiary materials were provided to the Residential Tenancy Branch for this hearing was January 20, 2015.

Preliminary Issue: Service of Documents

The landlord testified that this tenancy began March 1, 2014 and was set for a fixed term of one year. The landlord testified that there was a written tenancy agreement with respect to this tenancy however that agreement was not submitted in evidence for this hearing. The landlord testified that the tenant abandoned the rental unit. The landlord's son testified they became aware that the tenant had vacated the rental unit on November 18, 2015. The landlord testified that the tenant withheld rent, paying nothing for the month of November 2015. The landlord sought a monetary order for \$18,516.32.

Residential Tenancy Branch Rules of Procedure (“the Rules”) complement the *Residential Tenancy Act* providing clarification on the procedure for Dispute Resolution hearings. With respect to service of documents, Rule 3.1 provides that the applicant for residential tenancy dispute resolution must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the application for dispute resolution; the notice of hearing providing the date and time of the hearing; a package supplied by the Residential Tenancy Branch; and any other evidence, as appropriate and relevant to the dispute. The Rules state,

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that each respondent was served with the hearing package and all evidence, as required by the *Act*.

The landlord was unable to provide sufficient proof that the tenant was served with the Application for Dispute Resolution package within the required timeframes under the *Act*. Despite substantial opportunity at the hearing to speak to this issue, the landlord’s testimony was that, if the package was successfully served to the tenant, it was served four months after the application for dispute resolution was made and the package was provided to the landlord for the purposes of serving to the tenant.

The landlord submitted Canada Post receipts with respect to registered mail packages sent to the tenant. However, the landlord provided receipts that pre-dated the current application. As with much of the landlord’s material, she sought to rely on her actions, including service and submission of evidence, from prior hearings with respect to this tenancy.

The landlord was provided substantial opportunity to present her claim and to establish sufficient service of the materials for hearing. I find that she was unable to meet the burden of proof required of her for establishing sufficient service to the respondent/tenant in this matter.

Rule 3.11 emphasizes the importance of timeliness of submission and service of evidentiary materials. It states that “[e]vidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.” I find that there was unreasonable delay and insufficient effort by the landlord to ensure service was effected for this particular dispute resolution hearing.

I note that initially testimony of the landlord referred to previous dispute resolution hearings and that some of the matters raised at this hearing had been canvassed at

previous hearings. I note that, at a previous hearing, an arbitrator ordered the retention of the security deposit with respect to this tenancy and commented on other monetary issues, allowing those issues to remain alive.

Pursuant to the Rules, an Arbitrator may adjourn or dismiss an application when service is not proven satisfactorily. In this matter, based on the Rules of Procedure, the *Act*, regulations and in consideration of the ongoing litigation between these parties over a tenancy that ended in November 2014, I dismiss the landlord's entire application without leave to re-apply.

Conclusion

I dismiss the landlord's entire application without leave to re-apply.

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: May 26, 2015

Residential Tenancy Branch

