



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction, Preliminary, and Procedural Matters

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenants' security deposit, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that he served the tenants with his application for dispute resolution and notice of hearing by registered mail in one envelope.

The landlord was unable to supply the registered mail tracking number or the date it was sent, but submitted that he believed he could obtain this information from the local post office. The landlord was informed that a confirmation that one of the tenants received the registered mail would be the only instance that I would be able to proceed with his application and only against that tenant, as he included both applications for the tenants in one envelope.

Additionally, the landlord submitted that he had sent in his documentary evidence by facsimile on or about February 3, 2015 to the Residential Tenancy Branch ("RTB"); however, that evidence was not before me at the hearing.

The landlord was informed that he could send his evidence to me by facsimile by the close of office hours on the day following the hearing, or August 19, 2015, as the landlord presented compelling information that he had sent in his evidence as described.

The landlord was further informed that he could fax to me the proof of service of his application, which included the tracking number and tracking history, also by the close of office hours on the day following the hearing.

The landlord was further informed that I would consider his evidence if timely received and if not received, I would make a decision on the evidence before me at the hearing, which was the landlord's oral evidence.

It is noted that the landlord did fax his documentary evidence to me and it was received on time; however, I did not receive the landlord's proof of service of his application to the tenant or the tracking report showing whether one, if either, of the tenants received the registered mail.

Analysis and Conclusion

Section 89(1) of the Residential Tenancy Act and Section 3.1 of the Dispute Resolution Rules of Procedure (Rules) determines the method of service for documents. The landlord has applied for a monetary order which requires that the landlord serve **each** respondent as set out under the Rules. Residential Tenancy Branch Policy Guideline 12.3 as well states that each party must be served separately. In this case, there is no proof as to which tenant was sent or claimed the landlord's hearing package containing his application.

I find that this section of the Act, the Rules, Residential Tenancy Branch Policy Guideline and principles of natural justice and procedural fairness require that each respondent be served individually with an application, and in this case, as the landlord chose registered mail for service of the documents, by separate registered mail envelopes.

Due to the above, I find that the landlord did not serve each tenant/respondent separately with his notice of hearing and application for dispute resolution as required by the Act and the Rules and I dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable limitation period.

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: August 21, 2015

Residential Tenancy Branch

