



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF (Landlord's Application)
 MNSD, OLC, FF (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenant and the Landlord.

The Landlord applied for a Monetary Order for damage to the rental unit and to keep the Tenant's security deposit. The Tenant applied for the return of the security deposit and for the Landlord to comply with the *Residential Tenancy Act* (the "Act"). Both parties also applied to recover the filing fee for the cost of making their Applications. Both Applications were scheduled to be heard together in this hearing.

Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenant during the ten minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the Landlord's Application and the Notice of Hearing documents.

The Landlord explained that she had served her Application, the Notice of Hearing documents, and her documentary evidence to the Tenant a week prior to this hearing. The Landlord testified that they were sent on her behalf by registered mail and that the Canada Post website indicates that they were not picked up by the Tenant. The Landlord acknowledged that the documents should have been sent within three days of them being issued to her but explained that she was relying on someone else to effect service which was not done properly.

Section 59(3) of the Act provides that an applicant making an Application must serve a copy of the Application and Notice of hearing documents to the respondent within three

days of receiving the paperwork from the Residential Tenancy Branch. Furthermore, Rule 3.14 of the Residential Tenancy Branch Rules of Procedure requires an Applicant to ensure that documentary evidence being relied upon at a hearing must be received by the Residential Tenancy Branch and the Respondent not less than 14 days before the hearing.

As the Tenant failed to appear for the hearing, I was not satisfied that the Tenant had been put on notice of Landlord's Application as the Landlord served her Application well outside of the time limit provided by the Act. Therefore, I dismiss the Landlord's Application but provide leave to re-apply.

As the Tenant failed to appear for the hearing and the Landlord was ready to proceed and respond to the Tenant's Application, I dismiss the Tenant's 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: November 17, 2015

Residential Tenancy Branch

