



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain 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, which lasted approximately 14 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on July 15, 2015 by way of registered mail to the tenant's forwarding address. The landlord did not provide a copy of a Canada Post receipt and tracking number with her Application. The landlord provided a tracking number verbally during the hearing. The landlord confirmed that the package was returned to her because it was unclaimed by the tenant.

When questioned as to how the landlord obtained the tenant's forwarding address, the landlord initially stated that she could not remember and therefore, she could not prove service. Then she claimed it was written on the tenancy agreement. She later stated that the tenant gave it to her verbally before he moved out of the rental unit.

Analysis – Service of Landlord's Application

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows:

89 (1) An application for dispute resolution ..., 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;...

(c) by sending a copy by registered mail to the address at which the person resides...;

*(d) if the person is a tenant, by sending a copy by registered mail to a **forwarding address provided by the tenant**;*

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

The landlord has failed to sufficiently demonstrate that the tenant was served with the landlord's Application in accordance with section 89(1) of the *Act*. The tenant did not attend this hearing. The landlord changed her testimony three times in order to attempt to prove service, which questions her credibility. The landlord did not provide any documentary evidence to show that the tenant provided this forwarding address to the landlord after he vacated the rental unit or around the time that the landlord filed her Application. Moreover, the landlord's Application was returned to her. As I am unable to confirm that this was a forwarding address provided by the tenant in accordance with section 89(1)(d) of the *Act*, I am not satisfied that the tenant was properly served with the landlord's Application.

At the hearing, I advised the landlord that I was dismissing her Application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, with leave to reapply.

I advised the landlord that I was dismissing her Application to recover the \$50.00 filing fee, without leave to reapply. I advised the landlord that she would have to bear the cost of her filing fee.

I advised the landlord that she would be required to file a new application and pay a new filing fee if she wished to pursue orders against the tenant. I also advised the landlord that she would be required to prove service, including providing a registered mail receipt with the tracking number, and details, including documentary evidence where possible, regarding how she obtained the tenant's forwarding address, at the next hearing. I advised the landlord to consult the *Act*, the Policy Guidelines and the *Rules of Procedure* prior to the next hearing and to consult with an information officer at the Residential Tenancy Branch, if necessary.

During the hearing, I specifically referenced Residential Tenancy Policy Guideline 12, which outlines the methods to prove service of documents (emphasis added):

Where the respondent does not appear at a Dispute Resolution hearing, the applicant must be prepared to prove service under oath.

...

*Proof of service by registered mail should include the **original receipt** given by the post office and should include the date of service, the address of service, and **that the address of service was the person's residence at the time of service**...*

Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply...

Throughout this hearing and particularly when giving my oral reasons, the landlord became increasingly upset and repeatedly interrupted me. I warned the landlord about her conduct and the fact that it was inappropriate. However, the landlord continued with the same behaviour, despite my warnings. After issuing my reasons and confirming the landlord's mailing information, the landlord confirmed that because she was not recovering her filing fee, she was entitled to disconnect from the conference. The landlord then disconnected from the conference.

Conclusion

The landlord's Application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, is dismissed with leave to reapply.

The landlord's Application to recover the \$50.00 filing fee is dismissed without leave to reapply. The landlord must bear the cost of this filing fee.

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: December 04, 2015

Residential Tenancy Branch

