



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction and Preliminary Matter

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application.

Only the Tenants appeared at the hearing. The Tenants were assisted by J.A. who presented their evidence on their behalf. J.A. provided affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

J.A. testified and supplied documentary evidence that she served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on August 5, 2015. J.A. testified that she sent the documents to the Landlord's business address which she claims to have obtained from the Landlord's real estate website.

Section 88 of the *Residential Tenancy Act* provides for service of documents. Section 80 includes special rules for certain documents, including an application for dispute resolution. Pursuant to section 89(1)(c), service of an application for dispute resolution is effected when a Tenant sends the application by registered mail to the address at which the landlord resides or the address at which the landlord carries on business as a landlord.

In this case, while the Landlord may be a real estate agent by profession, there is no evidence that she *carries on her business as a landlord from her real estate office*.

According to J.A. the Landlord moved from the city in which the rental unit is located to another community in the fall of 2014. J.A. testified that this information was also obtained from the Landlord's real estate website.

It appears as though a person working at the Landlord's real estate business, by the initials L.L., signed for the registered mail package on August 6, 2015. J.A. could not provide any information as to who L.L. was or if the materials were provided to the Landlord.

J.A. supplied evidence which confirmed the Tenants communicated with the Landlord by email. Had the Tenants wished to obtain the Landlord's residential address for the purposes of effecting service, it is possible this information could have been obtained by email. Further, the Tenants may have been able to obtain confirmation that the Landlord was carrying on her business as a landlord from her real estate office.

The Tenants did not obtain an order for substituted service pursuant to section 71 of the *Act*.

Accordingly, and in all the circumstances, I find that the Tenants failed to serve the Landlord in accordance with the *Act*.

The evidence filed indicates the tenancy ended on June 30, 2013. The application was made on June 29, 2013, one day before the two year limitation imposed by section 60 of the *Act*.

Introduced in evidence was a letter from the Tenants to the Branch indicating that the application package had been sent to the Landlord on August 5, 2015.

Five and a half months later, on January 14, 2016, the Tenants submitted a binder of their evidence, including documents and photos, to the Branch. As the hearing was set for January 21, 2016, the Tenants' evidence binder was received by the Branch only seven days prior to the hearing. J.A. testified that the binder was sent to the Landlord at her business address on the same day, but had been returned as not being deliverable.

Residential Tenancy Rules of Procedure Rule 3.1 provides that the Applicant must file evidence in support of their application *at the time of filing*. *Rule 3.13* provides that where possible, copies of all of the applicant's available evidence must be submitted to the Branch and served on the other party in a *single* complete package and further provides that, "an applicant submitting any subsequent evidence must be prepared to explain to the Arbitrator why the evidence was not included in the initial evidence package". J.A. testified that she did not submit the evidence binder earlier as she was "thinking about their options".

Rule 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Branch not less than 14 days before the hearing.

In this case, the Applicant filed on July 29, 2015 and submitted their evidence binder on January 14, 2016, only one week prior to the hearing.

The Applicant confirmed that the evidence was returned as undeliverable to the Respondent Landlord's business address.

Conclusion

The Tenants failed to serve the Application for Dispute Resolution on the Landlord in accordance with section 89 of the *Residential Tenancy Act*. The Tenants also failed to follow *Residential Tenancy Branch Rules of Procedures 3.1, 3.13 and 3.14* with respect. In all the circumstances I dismiss the Tenants Application for Dispute Resolution.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 27, 2016

Residential Tenancy Branch

