



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in relation to the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant appeared with her advocate. The landlord attended.

Preliminary Issue – Service

The tenant filed her application for dispute resolution on 3 September 2015. The tenant's address for service on her application for dispute resolution was the address of the rental unit. The tenant vacated the rental unit by the end of September 2015. The tenant did not provide an updated address for service to the landlord.

The parties live in a community that uses post office boxes for delivery of mail. The tenant testified that, at all material times, her post office box remained the same as is included in the addendum to her application as her "mailing address".

The landlord provided evidence to the Residential Tenancy Branch, but did not serve it to the tenant as the tenant had vacated the rental unit and accordingly the landlord did not have an address for service where material will be given personally, left, faxed, or mailed.

The tenant did not consent to me considering the landlord's evidence.

Paragraph 59(2)(a) of the Act establishes that a party must use the approved form in order to file an application for dispute resolution. In the application for dispute resolution form, an applicant is required to provide an “address for service of documents or notices – where material will be given personally, left, faxed, or mailed” (emphasis added). The use of the future tense implies the ongoing functionality of that address.

Pursuant to rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* (in force 28 June 2014) (the Rules), a respondent must serve on the applicant all the evidence on which he or she intends to rely.

Section 88 of the Act establishes the means by which a party can serve, among others, evidence. There are many ways by which service can be affected:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;...

Pursuant to rule 2.12 of the Rules the landlord was also permitted to file a cross application be heard at the same time as the tenant's.

Subsection 89(1) of the Act sets out how an application such as the landlord's cross application must be filed:

- (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...

The tenant ceased to reside at the rental unit and, accordingly, that address could no longer be used for service pursuant to paragraphs 88(c), (e), (f), or (g) or 89(1)(c) of the Act. The tenant cannot reside at a post office box so the post office box is not an address for service pursuant to paragraph 88(c), (e), (f), or (g) or 89(c) of the Act. The tenant did not provide the landlord with a forwarding address—thus the landlord did not have an effective address for service pursuant to paragraphs 88(d) or 89(d) of the Act.

While there is no specific provision that establishes that the tenant must provide an updated address for service, by necessary implication, and in order to give full effect to the respondent's service requirements and right to be heard, there is an obligation on applicants to provide a current address for service. The tenant failed to provide a current address for service when she vacated the rental unit.

By failing to provide a current address for service, the tenant frustrated the landlord's ability to serve his evidence. The tenant further denied the landlord the ability to file a cross application to be heard at the same time. The tenant's failure to provide an updated address prejudiced the landlord as a respondent and application by cross application.

For these reasons, I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Technical Issues

As a result of repeated interruptions, I placed the participants on mute to allow me to speak uninterrupted. After disabling this selection, although the tenant appeared to remain connected to the teleconference, I was unable to hear any sounds with the exception of occasional muffled speech. I could still hear the landlord. The tenant did call back in to the teleconference and the proceedings were able to conclude. Nothing occurred in the tenant's absence.

Conclusion

The tenant's application is dismissed with leave to reapply. I have made no findings as to the merits of the tenant's application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 07, 2016

Residential Tenancy Branch

