



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order and/or authorization to retain the tenant's security deposit after the tenant did not ultimately move in to the residence. The landlord also sought to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:15 pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:00 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions towards her application.

Preliminary Issue: Service of Hearing Documents

The landlord testified that she served the tenant with her Application for Dispute Resolution by registered mail. At this hearing, the landlord testified that she received the tenant's current or "forwarding" address through the Better Business Bureau after the tenant submitted a complaint against her. She provided testimony that the tenant picked up the package sent by registered mail. The landlord did not submit any documentary evidence (for example, Canada Post receipt and tracking information) with respect to this mailing.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process to notify the respondent of the application and the hearing information related to the application. Service of documents is restricted by timelines and methods of service to underscore its importance. Beyond proper service, it is also essential that a party be able to **prove** that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing.

Residential Tenancy Policy Guideline No. 12, in considering the terms of service at section 88 to 90 in the *Act* states that, when the respondent (in this case the tenant) does not appear at a Dispute Resolution hearing, the applicant (the landlord) must be prepared to ***prove service under oath***. While the landlord provided undisputed testimony that the tenant was served with the documents to provide notification of this hearing, she did not provide any documentary evidence to support this testimony.

Prior to considering the details of the applicant's claim, I must be satisfied that the landlord/applicant sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing.

I find that the landlord has not sufficiently proven that the tenant was in fact served in accordance with the *Act* allowing the tenant to be aware of the landlord's application and this dispute resolution hearing. Therefore, I dismiss the landlord's application with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply. Any applicable timelines for this application will still 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: March 11, 2016

Residential Tenancy Branch

