



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNSD, OLC, OPC, MND, ET, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on March 21, 2016 for:

1. An Order cancelling a Notice to End Tenancy - Section 46;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 21, 2016 for:

1. An Order of Possession - Section 55;
2. An Order for damages to the unit - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. The matters of the Parties applications, amended applications and service of applications were dealt with as preliminary matters.

Issue(s) to be Decided

Has the Landlord received a copy of the Tenant’s application for dispute resolution?

Have the Tenant’s received a copy of the Landlord’s amended application?

Background and Evidence

After making their application the Tenants decided not to dispute the end of the tenancy and moved out of the unit on March 31, 2016. They did not serve the Landlord with their application for dispute resolution.

The Landlord obtained possession of the unit and on April 19, 2016 the Landlord made an amendment to its original application. On this same day the Landlord sent the amendment by registered mail to the dispute address as the Landlord did not have the Tenants' forwarding address. The Tenants state that they did not receive the Landlord's amended application.

Analysis

Section 89 of the Act provides that an application for dispute resolution must be served on the responding party. This section further provides that a landlord must serve a tenant in person, or by registered mail to a forwarding address provided by the tenant or to the tenant's residential address. As the Landlord no longer requires an order of possession and as the Landlord did not serve the Tenants with the amended application as required, I dismiss the Landlord's application and amended application with the exception of the claim for damages which I dismiss with leave to reapply.

As the Tenant did not serve the Landlord at all with its application for dispute resolution and as the Tenant's claim for the return of the security deposit was made before it could be made before the end of the tenancy I dismiss this claim with leave to reapply. As the Tenants have moved out of the unit I dismiss their claims to cancel a notice to end tenancy and for the landlord's compliance.

Conclusion

The Tenants' claim for return of the security deposit is dismissed with leave to reapply. The Tenants' remaining claims are dismissed.

The Landlord's claims for an order of possession and recovery of the filing fee are dismissed. The Landlord's claim for damages to the unit is dismissed with leave to reapply.

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: May 04, 2016

Residential Tenancy Branch