



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The landlord did not attend this hearing, although I waited until 1:44pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30pm. One of two tenants (Tenant RGM) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to the application. Tenant RAM was not present at this hearing.

Preliminary Issue: Service of Notice of Hearing to Respondent

Tenant RGM initially testified that he wasn't sure how the landlord was served with the ADR including the Notice of Hearing. After being provided with some time at the hearing, Tenant RGM testified that he spoke directly to Tenant RAM by electronic means. After that conversation, Tenant RGM testified that Tenant RAM (who was not present at this hearing) served the landlord with the tenants' Application for Dispute Resolution (ADR) on December 17, 2015 in person. I note that, while Tenant RGM testified that Tenant RAM served the landlord on December 17, 2015, the tenant's ADR package with Notice of Hearing was dated December 21, 2015 (4 days after the alleged service). Tenant RGM testified that he and his co-tenant have no written records and the tenancy ended in November 2015 therefore he and his co-tenant have to rely on their memories.

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. It is 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 respondents do not appear at a Dispute Resolution hearing, the applicants must be prepared to **prove service under oath**. Tenant RGM provided some testimony regarding service to the landlord however I find that the testimony was unclear and lacking sufficient detail. Further, I note that Tenant RGM testified that he was not responsible for the service of documents but that his co-tenant (Tenant RAM) served the landlord. Tenant RAM did not attend this hearing to present evidence to prove service of the Notice of Hearing. I find that the tenants did not provide sufficient evidence to prove that the landlord was served with the documents to provide notification of this hearing. The tenants were unable to provide any details, including the definitive date of service or any documentary evidence to show that the Notice of Hearing was sufficiently served to the landlord/respondent.

Prior to considering the details of the applicant's claim, I must be satisfied that the tenants/applicants sufficiently served the other party (the landlord), allowing that party an opportunity to know the case against them and attend the dispute resolution hearing. Based on the lack of detail and evidence submitted by the tenants to prove that the landlord was served with the Notice of Hearing, I find that the tenants have not sufficiently proven that the landlord was in fact served in accordance with the *Act* allowing the landlord to be aware of the details of the tenants' application at this dispute resolution hearing. Therefore, I dismiss the tenants' application with leave to reapply.

Conclusion

I dismiss the tenants' application 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: July 20, 2016

Residential Tenancy Branch

