



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPB, MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, for “other”, and to recover the fee for filing an Application for Dispute Resolution. As the Tenant has vacated the rental unit, I find there is no need to consider the application for an Order of Possession.

The Tenant filed an Application for Dispute Resolution in which the Landlord applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, a monetary Order for money owed or compensation for damage or loss, for “other”, and to recover the fee for filing an Application for Dispute Resolution.

Issue(s) to be Decided

Is either party entitled to a monetary Order?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

This hearing was scheduled to commence at 1:00 p.m. on September 14, 2016. The Landlord attended the hearing at the scheduled start time. By the time the teleconference was terminated at 1:16 p.m., the Tenant had not appeared at the hearing.

At the outset of the hearing the male Landlord stated that he was unable to serve the Application for Dispute Resolution to the Tenant because she had moved and did not provide him with a forwarding address.

When the Landlords were advised that his Application for Dispute Resolution was being dismissed, with leave to reapply, because the Tenant had not been served with notice of the hearing, the male Landlord stated that the Application for Dispute Resolution and Notice of Hearing were served to the Tenant at the rental unit, by registered mail, on April 05, 2016.

The male Landlord stated that he did not have a copy of the Canada Post receipt with him at the time of the hearing and he was unable to provide a Canada Post tracking number. The

Landlord did not submit any documentary evidence to corroborate his testimony that the Application for Dispute Resolution and Notice of Hearing were served by registered mail.

Analysis

As the Tenant did not attend the hearing I find that she failed to diligently pursue her Application for Dispute Resolution. I therefore dismiss the Tenant's Application for Dispute Resolution, without leave to reapply.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure stipulates that at the hearing an applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that each respondent was served with the hearing package and all evidence, as required by the *Act*.

Ideally, an applicant would submit documentary evidence from Canada Post to prove that the Application for Dispute Resolution and the Notice of Hearing were served by registered mail. In some circumstances providing a Canada Post tracking number is sufficient to satisfy me that documents were served by registered mail.

In these circumstances, where the Landlord has not submitted documentation from Canada Post and the Landlord was unable to cite a tracking number, I find that the Landlord has submitted insufficient evidence to establish that the Application for Dispute Resolution was served to the Tenant.

English is not the Landlord's first language and we had significant difficulty communicating during this hearing. I find it entirely possible that the inconsistent testimony provided by the male Landlord in regards to service of documents was related to our communication difficulty, rather than an intent to mislead.

As the Landlord has submitted insufficient evidence to establish that the Application for Dispute Resolution was served to the Tenant, I am unable to proceed in the absence of the Tenant. I therefore dismiss the Landlord's Application for Dispute Resolution, with leave to reapply. The Landlord has the right to file another Application for Dispute Resolution.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, with leave to reapply. The Tenant's Application for Dispute Resolution is dismissed, without 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: September 14, 2016

Residential Tenancy Branch

