



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC MNSD OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for compensation for damage or loss under the Act pursuant to section 67; authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The landlord did not attend this hearing, although I waited until 9:16 a.m. in order to enable the landlord to join this teleconference hearing scheduled for 9:00 a.m. The tenants attended the hearing and were given a full opportunity to be heard.

Preliminary Issue: Service of Notice of Hearing to Respondent

Tenant AA testified that she served with the ADR with the Notice of Hearing and amendment to her application to the landlord by UPS postal service. She did not submit a copy of the receipt for this hearing nor could she provide the information from the receipt at this time. The landlord did not attend this hearing.

I note that, while Tenant AA testified that she served the landlord by UPS, this is a not a type of service generally accepted in the usual course of hearings. Any type of service outside of the provisions of service in sections 88 to 90 of the Act (explained in Residential Policy Guideline No. 12) would require an additional application prior to the hearing for consideration of substituted service of documents.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process to notify the respondent of the application, the hearing date and time as well as the 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**. In these circumstances, the limited testimony of Tenant AA was not sufficient to prove service. I was not provided with any documentary evidence as proof of service to substantiate the Tenant AA's testimony. I find that the tenants were unable to prove service of the application for this hearing.

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 documentary 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: May 24, 2017

Residential Tenancy Branch