



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNSD MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- authorization to retain the tenants’ security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant MS attended the hearing by way of conference call, the landlords did not. I waited until 2:23 p.m. to enable the landlords to participate in this scheduled hearing for 2:00 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

Accordingly, **in the absence of any submissions in this hearing from the landlords I order the landlords’ application dismissed with liberty to reapply.** I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

Preliminary Issue - Service of the Application for Dispute Resolution

The tenant MS testified during the hearing that she served the landlords the tenants’ application for dispute resolution by way of registered mail, but did not provide a tracking number, receipts, or sufficient evidence to support that the landlords were served in accordance with Section 89(1) of the *Act*.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

As there is no way to confirm that the landlords were served in a manner required by section 89(1) of the *Act*, I cannot consider the tenants' application for a Monetary Order. I am not satisfied that the landlords were properly served with any portion of the tenant's application for dispute resolution.

As the tenants' application has not been served to the landlords in a method required under section 89(1) of the *Act*, I dismiss the tenants' application with leave to reapply.

Conclusion

I dismiss both the tenants' and landlords' applications 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: September 15, 2017

Residential Tenancy Branch