



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* ("Act"), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 1:30 p.m. with only me and the tenant present. When I asked the tenant to remove her call from speakerphone because it was interfering with the conference, she refused to do so. I could hear someone whispering into the call with the tenant, so I asked her to call back into the conference without speakerphone being activated. She exited the call at 1:33 p.m. and called back at 1:40 p.m., stating that she called the wrong number.

When she called back into the conference, the tenant affirmed that her phone was not on speakerphone and that no one else was participating in the conference with her. I notified her that she could have an agent or advocate assist her with the hearing, particularly since she claimed to have a power of attorney for her previous health issues. No written power of attorney was provided by the tenant for this hearing. I informed her that the people assisting would have to identify themselves and speak directly with me, rather than whispering information to the tenant. The tenant claimed

that she was of sound mind and able to participate in the conference on her own and that her power of attorney was not there with her, nor did she need assistance with this hearing. She claimed that the power of attorney filed this application while she was in the hospital undergoing dialysis and because she was moving into assisted living but otherwise she was capable of representing herself.

Accordingly, I proceeded with the hearing with the tenant only, as no written power of attorney was provided, and the tenant affirmed she was capable of representing herself. The hearing ended at 1:50 p.m.

Preliminary Issue – Service of Tenant's Application

The tenant initially testified that the landlord was not served with her application for dispute resolution hearing package. She said that she did not notify him of this hearing.

She then claimed that her daughter-in-law served the application to the landlord but she did not know how. During the hearing, she asked someone in the same house with her to call her daughter-in-law to obtain evidence regarding service. She said that she was told that her daughter-in-law emailed the application package to the landlord but she did not provide a date.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows:

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;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

The tenant was unable to confirm a date of service. Service by email is not permitted under section 89 of the *Act*. Accordingly, I find that the tenant failed to prove service in

accordance with section 89(1) of the *Act* and the landlord was not served with the tenant's application.

At the hearing, I advised the tenant that I was dismissing her application with leave to reapply, except for the filing fee. I notified her that she would be required to file a new application and pay a new filing fee, if she wished to pursue this matter further. I cautioned her that she would have to prove service at the next hearing.

Conclusion

The tenant's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the tenant's application 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: November 30, 2017

Residential Tenancy Branch