



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MNR MNDC MNSD MND

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- and a monetary order for money owed or 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

While the landlord's agent, MR, attended the hearing by way of conference call, the tenants did not. I waited until 2:10 p.m. to enable the tenants to participate in this scheduled hearing for 2:00 p.m. The landlord's agent was 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.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package on July 14, 2017, by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 19, 2017, five days after its registered mailing.

Preliminary Issue –Landlord's Evidence

The landlord testified in the hearing that he had served both the tenant and the Residential Tenancy Branch with the landlord's evidence. The Residential Tenancy Branch was not receipt of any of the landlord's evidence, and as the tenant did not attend there was no way to confirm that the tenant received the evidence package from the landlord.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

The landlord testified that he did serve all parties with his evidence. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

The landlord's application is a monetary one, and he testified that his written evidence is essential for the hearing.

As there is no way to confirm that this evidence was served to all parties, or whether there was an error or issue receiving the evidence at the Residential Tenancy Branch, I dismiss the landlord's 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: January 10, 2018

Residential Tenancy Branch