



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, O, 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 landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant’s security deposit, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 25 minutes. The landlord and her agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent was her daughter and that she had permission to speak on the landlord’s behalf at this hearing.

Preliminary Issue – Service of Landlord’s Application

When initially asked about service of the landlord’s application for dispute resolution hearing package, the landlord’s agent was not prepared to provide evidence, indicating that she needed time to go through her documents and ask the landlord. I provided her with approximately 20 minutes during this hearing in order to go through her documents to find evidence regarding service.

Initially, the landlord’s agent testified that the tenant was served with the landlord’s application for dispute resolution by way of email on August 31, 2017 and the notice of

hearing by way of email on September 3, 2017. She then stated that both the application and the notice of hearing were emailed on September 3, 2017, not August 31, 2017.

The landlord's agent indicated that the landlord's written evidence package was emailed to the tenant on November 20, 2017 and the amendment filed on November 30, 2017, was emailed on November 20, 2017, before it was filed at the Residential Tenancy Branch ("RTB"). The landlord did not provide a copy of the above emails. The landlord's agent indicated that email was permitted pursuant to a substituted service decision, dated August 31, 2017, made by an Adjudicator. The landlord provided a copy of this decision with her application.

The landlord did not provide a copy of the emails confirming service to the tenant, indicating who it was sent to, when it was sent or what was sent. The landlord provided three different dates of service, including a date where the amendment was not even filed at the RTB before it was sent to the tenant.

I find that the landlord was unable to provide sufficient evidence regarding service of this application and the amendment. The tenant did not appear at this hearing to confirm receipt of the application. Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the *Act* and the tenant was not served with the landlord's application.

At the hearing, I informed the landlord's agent that I was dismissing the landlord's application with leave to reapply, except for the filing fee. I notified her that the landlord would be required to file a new application and pay a new filing fee, if she wished to pursue this matter further.

I informed her that the landlord would have to prove service at the next hearing, including specific evidence regarding the date and method for service of the application and any additional written evidence. I also cautioned her about using the same substituted service decision to email application documents to the tenant, given that the decision was made on August 31, 2017, and that it may not be relevant in a future application.

Conclusion

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

The remainder of the landlord'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: January 30, 2018

Residential Tenancy Branch