



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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 landlord applied for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67; and
- authorization to retain the tenants’ security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 12 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Landlord’s Application

The landlord testified that the tenants were each served with a copy of the landlord’s application for dispute resolution hearing package on September 9, 2017, by way of registered mail. She provided two Canada Post receipts and tracking numbers with her application.

When I questioned the landlord as to what address she sent the mail to, she said it was a forwarding address provided by the tenants at a previous hearing with the Residential Tenancy Branch (“RTB”). She confirmed that she did not supply any documentation containing this forwarding address, to the RTB. The landlord provided a copy of a statement she said was made by one of the tenants indicating that a forwarding address had been provided, as well as a copy of a previous RTB decision between these parties for this tenancy. The landlord asked if I could look up the previous RTB file to find the

forwarding address. I notified her that it was not appropriate for me to look up a previous RTB file at a hearing regarding a different matter, in order to find evidence to support the landlord's application. I informed the landlord that she had from September 4, 2017, the date she filed this application, until March 28, 2017, the date of this hearing, a period of almost seven months, in order to provide evidence regarding service to the RTB.

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

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].*

I find that the landlord was unable to show that the address where she sent her application was a forwarding address provided by the tenants. She did not provide a copy of the relevant documentation. During the hearing, she indicated that she did not see their forwarding address in front of her. Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the *Act* and the tenants were not served with the landlord's application.

At the hearing, I informed the landlord 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, including evidence of the tenants' forwarding or residential address.

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: March 29, 2018

Residential Tenancy Branch