



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- the return of the security deposit and an amount equivalent to their security deposit pursuant to section 38 of the *Act*; and
- the recovery of the filing fee for this application from the landlords pursuant to section 72 of the *Act*.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 2:20 p.m. in order to enable the landlords to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of Notice of Dispute Resolution Proceeding Documents

As only the tenant attended the hearing, I asked the tenant to confirm that he had individually served both landlords named on his application with the Notice of Dispute Resolution Proceeding (Notice) for this hearing. The tenant testified that he had served the Notice by Canada Post registered mail. He stated that he had the tracking numbers at home, but not with him. As the tenant provided sworn testimony that he had served the landlords with the Notice by registered mail, I allowed the tenant an opportunity to upload the documentary evidence in support of this by 10:00 a.m. the day following the

hearing. I explained to the tenant that if he was unable to provide proof of service of the Notice of this hearing, I would dismiss his application with leave to reapply.

Residential Tenancy Policy Guideline 12. Service Provisions explains the requirement for each party named on an application to be served separately, as follows:

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

Important: all parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the hearing being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

In response to my directions, the tenant uploaded a Canada Post Xpresspost receipt, not a registered mail receipt. The receipt indicated that the tenant had paid extra for the added service requiring signature upon proof of delivery. He also uploaded photographic evidence showing two envelopes individually addressed to each landlord, but only one Canada Post Xpresspost tracking number and one mailing envelope, addressed to both landlords.

Therefore, the tenant did not serve each party named on his application separately, instead he placed the two separately addressed packages in one envelope, addressed to both landlords. I went online to check the Xpresspost tracking report to determine if the package had been signed as received by one of the parties, and although the report indicated that the package was delivered, no signature was provided in the tracking report. Therefore, it is not possible to determine which of the landlords, or if either of them, received the tenant's Notice of this hearing with information regarding the hearing details, such as call in number and participant code.

Further to this, as the tenant's claim is for a monetary award, and if he were successful in his application, I would not be able to issue a monetary order without confirmation that at least one of the landlords named on the application had been properly served with the Notice.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedures sets out the requirement of an applicant to demonstrate for proof of service:

3.5 Proof of service required at the dispute resolution hearing:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Pursuant to Rule 3.5 noted above, I do not find that the Notice of this hearing was served by the tenant to the landlords as required by the *Act* and the Rules of Procedure.

The tenant's application for the return of the security deposit is dismissed with leave to reapply. I make no findings on the merits of the matter. The issuance of this decision with leave to reapply does not extend any applicable time limits under the *Act*.

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

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: June 27, 2018

Residential Tenancy Branch