



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

Pursuant to section 9.1 (1) of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- a Monetary Order for damages pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Only the landlord's agents JM and SH attended the hearing. The tenant did not attend at the appointed time set for the hearing, although I waited until 1:45 P.M. to enable her to participate in this hearing scheduled for 1:30 P.M. The landlord's agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Issue(s) to be Decided

Is the landlord entitled to:

- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- a Monetary Order for damages pursuant to section 67 of the *Act*;
- to retain the security deposit pursuant to section 38 of the *Act*; and
- to recover the filing fee from the tenant pursuant to section 72 of the *Act*.

Background and Evidence

Preliminary Issue – Service on the tenants

The landlord brought this application on December 18, 2017. The Application for Dispute Resolution, with supporting documents and written evidence were initially sent by registered mail to the tenant on December 18, 2017, to an address that landlords agents acknowledge was incorrect. On December 22, 2017, the Application for Dispute Resolution, with supporting documents and written evidence was sent to the tenant at a new address that the tenant had provided to the agents for the landlord in writing at the time of the move out inspection.

There is no documentary evidence before me to prove that the tenant was ever properly served with the Application for Dispute Resolution, with supporting documents and written evidence.

During the hearing the agents for the landlord could confirm that the materials mailed on December 18, 2017, (to the wrong address), had been sent via registered mail and, they had the receipt number to prove this. However, they were not able to prove that the materials mailed on December 22, 2017 (to the correct address), had been sent via registered mail and had no receipt number or other evidence available to them to try to establish this fact.

Analysis and Conclusion

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a 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 *Act*, the applicable rules and guidelines all have specific requirements pertaining to service of a hearing notice. This is to ensure that all parties are aware of the claim and have opportunity to respond. The applicant has the burden of proving service at the hearing, under paragraph 3.5 of the Rules of Procedure which states:

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.

The landlord as the applicant in this case has the burden of proving service by one of the prescribed methods, as stated in paragraph 15 of Policy Guideline 12:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

I find there is no evidence before me to prove on the balance of probabilities that the tenant was served with the Application for Dispute Resolution, with supporting documents and written evidence, by mail on December 22, 2017.

As a result, this Application is hereby **dismissed with leave to reapply**. However, this does not extend any applicable time limits under the *Act* and I have made no findings of fact or law with respect to the merits of this Application.

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: July 4, 2018

Residential Tenancy Branch