



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- return of a security and/or pet damage deposit pursuant to section 38 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 10:03 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing, along with a witness C.M. 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 she had served the landlord named on this application with the Notice of Dispute Resolution Proceeding (Notice) for this hearing. The tenant testified that she had served the Notice by Canada Post registered mail. I asked the tenant to provide the Canada Post registered mail receipt tracking number as proof of service. The tenant stated that she did not have the tracking number with her as she had left it at a prior temporary residence. The tenant contacted the prior temporary residence in an attempt to get the receipt with the tracking number, but it was not located.

I explained to the tenant that her application would be dismissed with leave to reapply as proof of service of the Notice could not be provided. The tenant requested an adjournment in order to avoid having to reapply for dispute resolution.

Residential Tenancy Branch Rule of Procedure 7.9 provides the following list of factors to consider when determining if a request for adjournment should be allowed:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party.

I considered that the tenant's request for an adjournment was a result of the tenant's neglect in following the Rules of Procedures which require proof of service. As the tenant had already been provided with an opportunity during the hearing to try and obtain the tracking number without success, I considered that it would be unlikely for her to obtain it even if an adjournment was granted. I further considered that granting an adjournment could cause prejudice to the other party, and since the other party was not present, I could not consider their submissions. Therefore, I declined to adjourn the hearing.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedures sets out the requirement of an applicant to demonstrate 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 landlord as required by the Act and the Rules of Procedure, as the tenant was unable to provide proof of service.

The tenant's application for the return of the security and/or pet damage deposit is dismissed in its entirety, 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*.

Issue(s) to be Decided

Is the tenant entitled to the return of a security and/or pet damage deposit, pursuant to section 38 of the *Act*?

Conclusion

As noted above, I dismiss this Application for Dispute Resolution in its entirety 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: July 3, 2018

Residential Tenancy Branch