



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNRT MNSD FFL MNDCL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed, emergency repairs, or compensation for loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issue—Amendment to Tenant’s Application

The tenant served the landlord with an amendment to her monetary application on June 16, 2018, increasing the monetary claim to \$3,985.60. The tenant served the package by sending the package by registered mail. The landlord testified in the hearing that he did not receive the amendment package from the tenant, nor did he receive any notifications from the post office that a package was sent to him.

The tenant provided a post office tracking number in the hearing, and the testified that the package was sent back to her. The post office website confirmed that the tenant had sent a package on June 16, 2018, but on June 18, 2018 the package was “redirected to recipient’s new address”. The landlord provided sworn testimony that his address has not changed, and the tenant had no knowledge of what “new address” the note was referring to.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

I find that the tenant applicant has not provided sufficient evidence to support that the landlord was properly served with her amendment package as required by the *Act* and the Rules of Procedure.

I advised both parties in the hearing that as this amendment was not received in accordance with RTB Rule 4.6, and the respondent has the right to review and respond to the amendment and supporting evidence, the package will be excluded and not considered as part of the tenant’s application. The tenant chose to withdraw her application at this time.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the tenant’s case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Preliminary Issue - Service of the Landlord’s Application for Dispute Resolution

The landlord testified during the hearing that although the tenant did provide him with her forwarding address, the forwarding address provided was her place of work, and therefore he was unsuccessful in personally serving her with his application package and evidence for the hearing. The landlord testified that he had also attempted to send a package by regular mail to the address provided, but he was not able to confirm service of that package. The tenant testified in the hearing that she was not served with the landlord's application package or evidence for the hearing.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 has not met the requirements of section 88 of the *Act* for service of his Application. Accordingly, I dismiss the landlord's entire application with leave to reapply.

The tenant confirmed her forwarding address in the hearing for service of any future applications.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the landlord's case, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

Conclusion

Both the tenant's and the landlord's applications to recover the filing fee are dismissed without leave to reapply.

The tenant's application was withdrawn.

The remaining portion of the landlord's application was 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: July 6, 2018

Residential Tenancy Branch