



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled to deal with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explored service of hearing documents. The applicant testified that she sent the hearing documents to the named landlord at her address of residence in late November 2017 or early December 2017 via courier. The named landlord confirmed receipt of a package in December 2017 but described the documents as being an "application receipt" and evidence but that there was no Notice of Dispute Resolution Proceeding or Application for Dispute Resolution. I noted that a similar package was also uploaded to the Residential Tenancy Branch service portal by the applicant. The landlord testified that she received an email from the Residential Tenancy Branch on June 27, 2018 concerning an upcoming hearing and she obtained the teleconference call particulars from staff at the Residential Tenancy Branch. The landlord then passed on the documentation she received from the applicant to her agent in late June 2018.

An applicant has a burden to prove the respondent was served with all of the required hearing documents in a manner that complies with the Act and the Rules of Procedure. Section 59 of the Act requires that an applicant serve the Application for Dispute Resolution to the respondent within three days of filing. Section 89(1) provides for the acceptable methods of service for a monetary claim, which are: personal service and registered mail. Registered mail is any product offered by Canada Post for which a signature is required. Using a courier service is not an acceptable method of service. The Rules of Procedure provide for service of all other documents that must be served with the Application for Dispute Resolution including the Notice of Dispute Resolution

Proceeding. Having heard the landlord describe the documents she received via courier, I found I was unsatisfied the applicant met her burden to prove she served all required hearing documents in accordance with section 89(1). Therefore, I informed the parties that I would dismiss this application with leave to reapply.

As a courtesy to the parties, I addressed the issue of serving the landlord with a future Application for Dispute Resolution if the tenant(s) were to file one. The named landlord confirmed that she became the owner of the property following the death of the former named landlord, the landlord's husband, and that she holds the security deposit. The named landlord confirmed that her preferred service address is the service address the applicant used in sending the courier package in December 2017. The landlord's agent said the property management company he represents should also be named as landlord on any future Application for Dispute Resolution filed by the tenant(s) and served at the service address that appears on several documents including the tenancy agreement, notices to end tenancy, and mutual agreement to end tenancy. The parties were informed that the Act provides for the definition of "landlord" and that several different entities or parties may meet the definition of "landlord". Co-landlords are jointly and severally liable, just as co-tenants are, meaning an Application for Dispute Resolution may be filed against one or some or all parties that meet the definition of landlord or tenant. Where multiple respondents are named, each named respondent is entitled to receive a hearing package sent to them at their service address.

For information purposes, I informed the landlord(s) that the landlord is bound to comply with section 38 of the Act with respect to disposition of a security deposit which includes: seeking the tenant's written consent to make deductions from the deposit; making a claim against the deposit by filing an Application for Dispute Resolution; and, refunding the deposit within 15 days of the tenancy ending or receiving the tenant's forwarding address in writing, whichever date is later. I expressly stated that I was making no finding as to whether there has been a violation of section 38 of the Act on part of the landlord with this decision and that would be before another Arbitrator if the tenant(s) were to file another Application for Dispute Resolution. However, the parties would be well served by informing them that section 71 of the Act provides an Arbitrator the authority to deem a party sufficiently served even if service did not comply with sections 88 or 89 of the Act.

The parties enquire about the proper naming of the tenant(s). Having dismissed this Application for Dispute Resolution due to improper service it is not before me to make any findings of fact or law with respect to this tenancy.

For the parties' reference, I encouraged them to familiarize themselves with section 38, 88 and 89 of the Act and govern themselves accordingly. The Act and information may be found on the Residential Tenancy Branch website or by contacting an Information Officer with the Residential Tenancy Branch.

Conclusion

The Application for Dispute Resolution and other required documents were not served in a manner that complies with the Act and the Application for Dispute Resolution 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 11, 2018

Residential Tenancy Branch