



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNDL-S

Introduction

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

- a monetary order for compensation for damage or loss pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this 1:30 p.m. hearing, although I left the teleconference hearing connection open until 2:27 p.m. The landlord and the landlord's agent (herein referred to as "the landlords") attended the hearing and were 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 landlord and I were the only ones who had called into this teleconference.

As only the landlords attended the hearing, I asked the landlords to confirm that they had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing. As the tenant had failed to provide the landlords with a forwarding address upon moving out, the landlords testified that they sent their notice of this hearing to an address the tenant had provided on his rental application form prior to the start of the tenancy. The landlords testified that they believed this to be the address of the tenant's father. The landlords provided a tracking number (which I have recorded on the cover sheet of this decision) as proof the notice had been delivered, however the landlords used "regular parcel" service and did not add the service requiring signature upon delivery. Therefore, there is no information available to confirm that the package was delivered to the tenant.

I asked the landlords if they had previously tried to contact the tenant at the address they had used for service of documents and they stated that they had not sent anything to that address prior to sending the notice of dispute documents.

Where a respondent is not at the hearing, the applicant bears the burden to prove the respondent was served with notification of the hearing and the claims against them in one of the ways permitted under section 89 of the Act.

Since this application pertains to a monetary claim by a landlord against a tenant, section 89(1) of the Act provides that the permissible methods of service are: to serve the tenant in person; to send registered mail to the tenant at the tenant's address of residence or forwarding address; or to serve as ordered by the Director.

In this matter, the landlords sent the notice of this hearing using Canada Post regular parcel service without the signature option. Part 15 of Residential Tenancy Policy Guideline 12. Service Provisions explains that the applicant has the burden of proving service of the notice of hearing and describes the proof of service required, as follows, in part:

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 by **Registered Mail** should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

Further, in this case, the landlords were not provided with a forwarding address by the tenant and do not know the address of his residence. The landlords testified that they believe they have the address of the tenant's father, however, the landlords have not made any attempts to contact the tenant at the address or to confirm in any way that even if the address is the address of the tenant's father, that the tenant's father is in contact with the tenant or able to relay to the tenant any mail or notices received on behalf of the tenant.

I asked the landlords if they had applied for a substituted service order as they do not have a forwarding address for the tenant. They advised that they had not done so and acknowledged that they are not familiar with all of the residential tenancy legislation requirements and processes. I informed them that they could contact the Residential Tenancy Branch to speak with an Information Officer or visit the Branch's website. The Information Officers at the Residential Tenancy Branch are accessible by telephone and email to provide assistance to both landlords and tenants regarding the process to be followed when a tenancy agreement is in dispute and the appropriate remedies available under the *Act*.

In this case, I find that the landlords failed to establish that the tenant was served with notification of this proceeding in a manner that complies with section 89(1) of the *Act*. Therefore, I order this application dismissed, and grant the landlords liberty 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 landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage or compensation?

Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of their claim?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Conclusion

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlords' application is dismissed with leave to reapply, due to a service issue. This decision does not extend any applicable time limits under the *Act*.

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 24, 2018

Residential Tenancy Branch