



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, FFL, MNDCT, MNSD, FFT

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for compensation for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied for compensation for loss or money owed, for the return of their security deposit, and to recover the fee for filing this Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenants?

Are the Tenants entitled to compensation for being served with a Two Month Notice to End Tenancy?

Background and Evidence

The Landlord stated that on December 13, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The Landlord did not submit documentation that corroborates this statement and she was unable to cite a Canada Post tracking number to corroborate that statement.

The Tenants did not attend the hearing in support of their Application for Dispute Resolution.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
 - (c) by sending a copy by registered mail to the address at which the person resides;
 - (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
- or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I find that the Landlord has submitted insufficient evidence to establish that the Application for Dispute Resolution and the Notice of Hearing were served to the Tenants by registered mail. In reaching this conclusion I was heavily influenced by the fact the Landlord did not submit documentation or a tracking number from Canada Post that corroborates the Landlord's testimony regarding service.

As the Landlord has failed to establish that the Landlord's Application for Dispute Resolution was served to the Tenants, I am unable to proceed in the absence of the Tenants. The Landlord's Application for Dispute Resolution is, therefore, dismissed with leave to reapply.

As the Tenants did not attend the hearing in support of their Application for Dispute Resolution I find that they have abandoned that claim and I dismiss the Tenants' Application for Dispute Resolution, with leave to reapply.

Both parties have the right to file another Application for Dispute Resolution in regards to these matters.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, with leave to reapply.

The Tenants' Application for Dispute Resolution is 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 *Act*.

Dated: July 26, 2018

Residential Tenancy Branch