



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenants attended the hearing by way of conference call, the landlord did not. LZ, a law student, attended the hearing with the tenants. I waited until 1:42 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

Preliminary Issue - Service of the Applications for Dispute Resolution

Two applications pertaining to the same issues were filed by the tenants. The first application filed on February 18, 2018 names the respondent as the named landlord in the tenancy agreement. The tenants served the named landlord their Application for Dispute Resolution by way of registered mail, but received no response. This tenancy was to begin on November 15, 2017, but the tenants were never able to move in as the family of the landlord informed the tenants that the landlord was now deceased, and the

home was no longer available for rent. The tenants testified in the hearing that they were unsure who to serve their application to as the landlord may be deceased. The tenants and the law student assisting them expressed frustration in the hearing over the challenge of serving a party who may or may not be deceased. Nobody attended the hearing on behalf of the landlord.

On August 9, 2018, the tenants filed a new application, against the estate of the landlord, and against the second owner of the home. The tenants served this Application for Dispute Resolution by regular mail with no tracking.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...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;...*

The tenants indicated in the hearing that the landlord may be deceased. As nobody appeared for the respondent in this hearing, I am unable to ascertain whether the landlord is indeed deceased, or not. If the landlord is indeed deceased, I would not be able to proceed with the hearing as I am not satisfied that the estate of the landlord was served in accordance with section 89(1) of the *Act*. As the tenants were not able to confirm whether the landlord is still alive, and therefore able to receive their application, I dismiss the tenant's first application filed on February 18, 2018 with leave to reapply.

As the second application filed on August 9, 2018 was not served in a manner required by section 89(1) of the *Act*, I cannot consider this application. I dismiss the tenants' second application against the two respondents with leave to reapply.

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 either application, I find that the tenants are

not entitled to recover the \$100.00 filing fee paid for both applications. The tenants must bear the cost of this filing fee for both applications.

Conclusion

I dismiss both of the tenants' applications for the return of their security deposit with leave to reapply.

The tenants' applications to recover the filing fee for both applications are dismissed without 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: September 19, 2018

Residential Tenancy Branch