



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT OLC

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 2:07 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was 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 Application for Dispute Resolution

The tenant testified during the hearing that he had personally served the landlord his application for dispute resolution. At the beginning of the hearing the tenant could not confirm the exact date of service. The tenant was given several opportunities during the hearing to call witnesses. At 2:00 p.m. the tenant's witness KB called into the hearing to testify to the fact that he was present when the tenant had served the landlord, but KB testified that he was unable to recall when this took place.

The tenant tried, without success, to have another witness call in despite being given 37 minutes to do so, and despite having had ample opportunity to prepare for this hearing. The hearing ended at 2:07pm, by which time the tenant's second witness failed to call into the teleconference.

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;...*

Although the tenant was unable to provide a date of service at the beginning of the hearing, the tenant later testified that the landlord was served on May 26, 2017. As the landlord was not in attendance to confirm that he was in fact served in accordance with the Act, and in the absence of sufficient supporting evidence to support that the landlord was served on May 26, 2017 in a manner required by section 89(1) of the *Act*, I cannot consider the tenant's application for a Monetary Order. I am not satisfied that the landlord was properly served with any portion of the tenant's application for dispute resolution.

As I am not satisfied that the tenant's had provided sufficient evidence to support that his application had been served to the landlords in a method required under section 89(1) of the *Act*, I dismiss the tenant's application with leave to reapply.

Conclusion

I dismiss the tenant's 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: September 13, 2018

Residential Tenancy Branch