



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$950 including the return of the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The Tenant testified she served the landlord with a copy of the Application for Dispute Resolution/Notice of Dispute Resolution Hearing by putting it on her door after the parties agreed this was a sufficient form of service. The Tenant testified she served it in this manner because she was afraid she would not be able to serve within the required 3 days by serving by any other method. The landlord testified she did not agree to this form of service and that she told the tenant to serve her by registered mail. Further, when she returned home that night the documents were strewn all over the place and she the Application for Dispute Resolution was not one of the documents she was able to find.. She acknowledged receiving a copy of the Notice of Dispute Resolution Hearing and thus was able to appear at the hearing. The landlord testified she does not know what claims the tenant is making. Further, had she received the Tenant's Application for Dispute Resolution she would have filed her own claim. I reserved on the question of whether there was sufficient service.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year written tenancy agreement that provided that the tenancy would start on March 1, 2018 and end on February 28, 2019. The rent was \$1500 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$750 at the start of the tenancy.

The rent was paid for March 2018. However, the tenant testified she was forced to vacate the rental unit around the middle of March after a neighbouring strata owner subjected her to extreme harassment to the extent that she felt unsafe in her home. She testified the landlord is at fault because she told others in the strata complex that she was a police officer and the neighbouring tenant was targeting her because of her profession.

The tenant(s) provided the landlord with his/her their forwarding address in writing on March 30, 2018.

Analysis: - Was the landlord sufficiently served?

Section 89(1) of the Residential Tenancy Act provides as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Section 71 of the Act provides as follows:

Director's orders: delivery and service of documents

71 (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

After carefully considering all of the evidence I determined the Tenant has failed to properly serve the landlord with a copy of the Applications for Dispute Resolution for the following reasons:

- The Tenant failed to comply with section 89(1) of the Act as she failed to personally serve the landlord or serve by mailing, by registered mail to where the landlord carries on resides or carries on business.
- The Tenant failed to obtain an order for substituted service as permitted under section 89(1)(d).
- Section 71(2)(3) gives an arbitrator authority to order that a document not served in accordance with section 89 was sufficiently served for the purposes of the Act. I determined this was not an appropriate case to make such as order. I accept the testimony of the landlord that she did not receive a copy of the Application for

Dispute Resolution and she does not know what claims the Tenant is making. For the most part the materials uploaded by the landlord to the website identify claims the landlord believes she has against the Tenant and is not evidence relating to a defense of the claims brought by the Tenant.

- The Tenant testified she served the landlord in this manner as she was concerned the landlord would not receive it in 3 days. The Act does not excuse a lack of sufficient service for a reason such as this. The Tenant could have ensured sufficient service by using both methods.

Conclusion:

As a result I order that the Application for Dispute Resolution filed by the Tenant by dismissed with leave to re-apply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

This decision is final and binding on both parties.

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 04, 2018

Residential Tenancy Branch