



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO MANAGEMENT
[name suppressed to protect privacy]

DECISION

Dispute Codes FFT LAT LRE

Introduction

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

- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 11:10 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue - Service of the Tenant's Application for Dispute Resolution

The tenant testified during the hearing that he had personally served his application for dispute resolution to the landlord, but he could not recall the date of service.

Section 89(1) of the *Act* establishes the following requirements for service of an application for dispute resolution.

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;...*

At the hearing, I advised the tenant of my finding that as the landlord did not attend the scheduled hearing to confirm that he was served with tenant's application, I must be satisfied that the tenant had provided

sufficient supporting evidence to support that the landlord was served with the application for dispute resolution in a manner required by section 89(1) of the *Act*.

The tenant did not provide any witness testimony, completed proof of service documentation, nor was the tenant able to provide the date that the landlord was served with his application. In the absence of sufficient supporting evidence to support that the landlord was served in a manner required by section 89 of the *Act*, I cannot consider the tenant's application. I am not satisfied that the landlord was properly served with any portion of the tenant's application for dispute resolution. On this basis, I dismiss the tenant's application is dismissed 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 this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply.

I dismiss the remaining portion of the tenant's application 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 6, 2018

Residential Tenancy Branch