



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, the tenant confirmed that he had received the landlord's application, in person. As the tenant did not raise any issues regarding service of the application, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Service of Landlord's Evidence

The landlord testified that on September 6, 2018 he forwarded an evidence package including an amendment via registered mail to the tenant, which was returned to him as undeliverable. The landlord provided a Canada Post receipt and tracking number as proof of service. The address used for service was the forwarding address provided by the tenant.

The tenant testified that because he had moved on June 20, 2018 from the forwarding address he had previously provided to the landlord, he did not receive the landlord's evidence package.

Section 88 of the *Act* establishes that when a landlord serves evidence for a dispute resolution hearing and it is served by registered mail, it must be sent to the address at which the tenant resides or to a forwarding address provided by the tenant.

In this case, the landlord has met the requirements of the *Act* by serving the documents to the last forwarding address provided by the tenant; however the tenant has clearly established that he did not receive the documents.

In addition to the documents not being received by the tenant, the documents were late pursuant to Rule 3.14 of the Residential Tenancy Branch ("RTB") Rules of Procedure. Documentary evidence must be received by the respondent and the RTB not less than 14 days before the hearing. If the evidence is received following this timeline, the evidence may or may not be considered depending on whether the

applicant can prove this evidence was new and relevant evidence that was unavailable at the time this application was made. The evidence package was received 13 days prior to the hearing and the landlord did not show this evidence was new and unavailable at the time the application was made.

Preliminary Issue – Service of Tenant's Evidence

During the hearing, the tenant testified that he did not serve the landlord the evidence package he intends to rely upon. Pursuant to Rule 3.15 of the RTB Rules of Procedure, a respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch.

Analysis

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. Since it is evident that neither party received the other's documentary evidence in relation to this monetary application, I find it would be a denial of the fundamental right to natural justice if I were to consider evidence that was not provided to or received by the parties. Furthermore, the landlord's evidence package was served contrary to the RTB Rules of Procedure; it was late by one day. For these reasons, I dismiss the landlord's entire application with leave to reapply.

Conclusion

The landlord's entire application 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 *Residential Tenancy Act*.

Dated: October 05, 2018

Residential Tenancy Branch