



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFT

Introduction

This decision pertains to the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks compensation for monetary loss pursuant to section 67 of the Act, and compensation for recovery of the filing fee pursuant to section 72(1) of the Act.

The landlord's agent and the tenant attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I have only reviewed, and considered in this Decision, the testimony and documentary evidence pertaining to the preliminary issue of this application.

Preliminary Issue: Service of Evidence by the Landlord

In my November 13, 2018, Interim Decision, I adjourned the hearing to allow the landlord an opportunity to serve, by way of registered mail, his evidence on the tenant.

During the November 13, 2018 hearing, and as reiterated in my Interim Decision, I instructed the landlord's agent to serve the landlord's evidence by way of registered mail on the tenant, and to submit a copy of the Canada Post registered mail receipt and tracking number prior to the next hearing.

Upon reviewing the file, it appeared that the landlord's agent failed to follow my instructions in respect of submitting a copy of the registered mail receipt and the tracking number in advance of today's hearing. While the landlord's agent testified that

he had copies of this documentation with him, this documentation was not submitted to the Residential Tenancy Branch as per my instructions. In addition, the tenant testified that despite receiving notifications reminding him of today's hearing, he had received no evidence from the landlord.

Rule 3.5 of the *Rules of Procedure*, under the Act, reads as follows:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

The importance of sufficient service of documentary evidence cannot be understated. In order for parties to be afforded a fair opportunity to be heard, and a fair opportunity to defend against claims, each party must be in full receipt of any evidence that may be used by the opposing party in advancing a claim.

Where one party disputes that they have received a full disclosure of evidence, the opposing party has the duty to establish, beyond mere words, that they have met their duty to disclose and serve all evidence that they wish to rely on in their claim.

In this case, the landlord's agent claims that they served the evidence. The tenant disputes that they received any evidence. Given the vital importance that must be placed on service meeting the requirements of section 89 of the Act, I instructed the landlord's agent to provide copies of the documentary evidence that may have established proof of service.

In the absence of that documentary evidence, I cannot make a finding of fact and law that the landlord has sufficiently served the tenant in compliance with the Act.

Given the above, having not been satisfied that the landlord served the tenant with all of the landlord's evidence, I dismiss the landlord's application with leave to reapply. The landlord is, therefore, at liberty to file a new application for dispute resolution in respect of this claim but is cautioned that sufficient proof of service will be required at any future hearing.

Conclusion

I dismiss the landlord'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 Act.

Dated: January 3, 2019

Residential Tenancy Branch