



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to recover the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant NK primarily spoke on behalf of both applicants.

The tenant said that they served the landlord with their application for dispute resolution and evidence by registered mail sent on June 21, 2019, six days before the hearing. The landlord disputes having been served with the tenants' material.

The landlord uploaded some evidentiary materials but testified that they have not served any materials on the tenants.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the security deposit for this tenancy?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that while they filed their application for dispute resolution on March 7, 2019, a Hearing Package was not sent out by the Branch until June 20, 2019. The tenant explained that the Branch was provided with an incorrect email address for the tenant.

The tenant testified that upon receiving the hearing package on June 20, 2019, they served it on the landlord at the earliest opportunity on June 21, 2019, by registered mail. The tenant provided a Canada Post tracking number as evidence of service. The landlord disputed that they have received any materials from the tenants.

Analysis – Adjournment Request

The tenant made an application to adjourn the present hearing in order to allow service to the landlord. The tenant submits that they did not receive the Hearing Package from the Branch as the Branch had an incorrect email address on file for the tenants. The landlord opposed an adjournment.

Rule of Procedure 7.9 provides the factors to be considered in determining if a matter ought to be adjourned. In the present case I find that much of the need for an adjournment arises from the action and inaction of the tenants.

The tenants provided an incorrect email address to the Branch and consequently were unable to receive the Hearing Package by email. The tenants did not explain why they made no efforts to follow up between the date the application was made on March 7, 2019 and June 20, 2019 to obtain the Hearing Package. I find that the failure to serve the respondent landlord with the materials arises from the action and inaction of the tenants. Consequently, I find that the present circumstances do not warrant an adjournment of the hearing.

Analysis – Service

The deemed service provision of section 90 of the *Act* provides that materials served by registered mail are deemed received on the 5th day after it is mailed. In the present circumstance the date of deemed receipt is June 26, 2019, one day prior to the hearing.

The deemed service provision is a rebuttable presumption. The landlord disputes that they have been served with the tenant's materials as of the date of the hearing.

Under the circumstances, based on the evidence I am not satisfied that the tenant's application and evidence has been served in accordance with the Act. As discussed above, I find that the tenants failed to obtain the Hearing Package from the branch in a timely manner and first received their materials on June 20, 2019, a week prior to the hearing. While the tenants gave some evidence of service by registered mail I find that I am not satisfied, based on the totality of the evidence of the parties, that the landlord was properly served as at the date of the hearing.

As I am not satisfied that the landlord has been served with the tenant's application in accordance with the Act, I dismiss the application with leave to reapply.

Conclusion

The tenants' 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: June 27, 2019

Residential Tenancy Branch