



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 22 minutes. The two tenants, tenant AV (“tenant”) and “tenant JH” 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 hearing began at 11:00 a.m. with only me and the tenant present. Tenant JH called into the hearing at 11:02 a.m. I informed tenant JH about what occurred in her absence. The hearing ended at 11:22 a.m.

Preliminary Issue – Service of Tenants’ Application

The tenant stated that the landlord was served with the tenants’ application for dispute resolution hearing package on March 15, 2019, by way of registered mail. The tenant confirmed that the original notice of hearing, dated March 13, 2019, was for the hearing to be held on May 9, 2019 at 1:30 p.m. The tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants’ application on March 20, 2019, five days after its registered mailing.

The tenant confirmed that she asked for the hearing to be rescheduled so that tenant JH could also attend. The tenant provided copies of two letters signed by tenant JH and the landlord, from April 2019, agreeing to reschedule the hearing for this current hearing date of June 7, 2019. A new notice of hearing, dated April 30, 2019, was sent to the tenant by way of email from the Residential Tenancy Branch ("RTB").

The tenant claimed that she served the landlord with this new notice of hearing by email on April 30, 2019.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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;

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

Service by email is not permitted under section 89 of the *Act*. Accordingly, I find that the tenants failed to prove service of the new notice of hearing, rescheduling this hearing to June 7, 2019, in accordance with section 89(1) of the *Act*. I find that the landlord was not served with the tenants' new notice of hearing.

At the hearing, I advised the tenants that I was dismissing their application with leave to reapply, except for the filing fee. I notified them that they would be required to file a new application and pay a new filing fee, if they wished to pursue this matter further. I cautioned them that they would have to prove service at the next hearing.

I notified the tenants that they could obtain information only, not legal advice, from information officers at the RTB. I informed them that they could hire a lawyer for legal advice, if they require assistance with their application and the hearing process. I

notified them that they could also have an agent attend on their behalf or assist them at a future hearing.

Conclusion

The tenants' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the tenant's 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 07, 2019

Residential Tenancy Branch