



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNDL-S MNRL-S FFL

Introduction

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

- a Monetary Order for unpaid rent and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenants' security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The landlord attended at the date and time set for the hearing of this matter. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:53 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that the tenants were individually sent the notice of this hearing by Canada Post registered mail. However, when I accessed the Canada Post website during the hearing to confirm the tracking numbers, I noted that the tracking numbers provided by the landlord pertained to service by Canada Post Xpresspost without the signature option selected.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure requires:

3.5 Proof of service required at the dispute resolution hearing

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.

There are several prescribed methods of service that are permissible, as outlined in section 89(1) of the *Act*:

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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).*

Registered mail is defined in section 1 of the *Act* as follows:

"registered mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available;

In this matter, the landlord failed to choose a method of mail delivery which provided confirmation of delivery to the named parties, through the requirement of a signature upon delivery.

Further to this, the respondents did not attend the hearing to confirm receipt of the notice of this hearing.

For these reasons, I cannot find that the tenants have been sufficiently served with the Notice of Dispute Resolution Proceeding as required by the *Act*.

Therefore, I dismiss the landlord's application with leave to reapply. I note this decision does not extend any applicable time limits under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for unpaid rent and damages caused by the tenants?

Is the landlord entitled to retain the security deposit in partial satisfaction of the compensation owed?

Is the landlord entitled to recover the cost of the filing fee from the tenants?

Conclusion

The landlord's application is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

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 20, 2019

Residential Tenancy Branch