



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The tenant attended the hearing, the landlord did not. The tenant testified he served the landlord with his application for dispute resolution proceedings by sending it via registered mail to the address provided by the landlord on the tenancy agreement. The tenant testified he sent the package by registered mail on April 11, 2019 and provided a tracking number, listed on the cover page of this decision.

Preliminary Issue

The tenant filed for dispute resolution on May 4, 2019. The tenant was adamant in testifying he served the landlord with his application and related documents on April 11, 2019, almost a **month before he filed the application** and being provided with the Notice of Hearing documents from the Residential Tenancy Branch.

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

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.

Residential Tenancy Branch Policy Guideline PG-12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position. I find that procedural fairness requires that I be satisfied the landlord has been served with the application for dispute resolution. Given the absence of any documentary evidence from the landlord and her failure to attend the hearing, I am not satisfied the tenant has served the landlord with the application for dispute resolution. I dismiss the tenant's claim for a return of the security deposit with leave to reapply. I make no finding regarding the merits of the tenant's claim.

Conclusion

The tenant's claim is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to 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: August 12, 2019

Residential Tenancy Branch