



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction, Preliminary and Procedural Issue and Matters

This hearing dealt with the tenants' Application for Dispute Resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for a monetary order for money owed or compensation for damage or loss and for a return of their security deposit, and to recover the cost of the filing fee.

The listed tenant and her legal representative attended the teleconference hearing.

No one attended on the landlords' behalf. As a result, service of the Notice of a Dispute Resolution Proceeding (Notice of Hearing), application, and evidence was considered.

The evidence submitted by the tenants shows that they have had a prior dispute resolution proceeding against their landlords, although not all the ones listed in this present application.

I note that the same tenant, SW, along with an assistant, and a landlord, K(full name) A, attended the hearing on April 26, 2018.

In a decision of May 8, 2018, by another arbitrator on the tenants' application for the same issues as the ones in this application, the tenants were granted a monetary order in the amount of \$1,910.00. The decision and monetary order of May 8, 2018, were issued against the attending landlord, K(full name) A.

Subsequent to the decision and monetary order being issued, the tenants filed an application for a correction of both documents, seeking to change the name of the landlord to TA and K.(initial) A. The landlord's name appeared to be a combination of

the landlords' first initials, with a forward slash between the two letters and their surname.

That request for a correction was granted and a corrected decision and monetary order was issued on May 24, 2018, listing the combination of the landlords' first initials, with a forward slash between the two letters and their surname.

The tenants' legal representative submitted written arguments prior to the hearing and made oral submissions at the hearing.

The legal representative said that the original monetary order turned out to be unenforceable in Small Claims Court as the corrected name on the monetary order was not the legal names of the landlords.

I find it important to note that in filing their original application, the tenants were cautioned by the Residential Tenancy Branch (RTB) about the landlords' first name; however, they elected to proceed as is.

Thereafter, the legal representative said they were advised by the RTB and a tenant's advocacy group to submit this new application for the issues.

The undisputed evidence is that this tenancy ended on September 1, 2017, and the present application was filed on August 29, 2019.

In this application, the tenants have listed five landlords, TA, aka K.(initial) A, K(full name) A, and two variations on the spellings of a surname beginning with the letter K and last name A.

As to the service of the tenants' application and hearing documents on the listed landlords, the legal representative submitted that a land title search for the rental unit show TA as the owner of the apartment, presumably the T part of the name combination of the landlords' name on the written tenancy agreement.

Further the tenancy agreement and the land title search show the mailing address of TA to be the address they used for the registered mail. Another title search shows that the mailing address of TA is owned by a business partner of TA, who is possibly related to one of the landlords. I note that the business partner's name is in no way similar to that of TA.

The legal representative said that all five of the individuals listed in their application were served by registered mail to the address shown on the land title search for the rental unit as noted above.

Upon my inquiry, the legal representative said the tenant, when trying to ascertain whether any of the landlords lived at the address served, was told by someone at that address that the landlords did not live there.

The legal representative said that the property at that address was large so as to make it possible that the landlords did live there. Additionally, the legal representative said that the landlords could be family members of the occupants of that property as there was a family resemblance.

The legal representative confirmed that all five registered mail envelopes were uncollected.

I find it important to note that the tenants were advised by the RTB that they could have applied for subservice of their application and hearing documents, through a means other than those recognized by the Act for service, such as email and text message, had they provided the proper evidence. The tenants elected to serve their application and hearing documents through registered mail, email and text message instead, without making the application for subservice.

Additionally, the tenants listed and served three people with variations of names, which I find cannot be shown to be a legal name for any landlord or respondent listed.

Analysis and Conclusion

Section 89(1) of the Act indicates the ways in which an application for dispute resolution must be given, such as in the case of the tenants' claim for a monetary order:

- (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*].

In the case before me I find that the tenants failed to provide sufficient evidence that they served their application to the landlords' address or the address in which he conducted a business, as they confirmed they did not know if that address was a place of residence or business of the landlords. They were specifically told that the landlords did not live there and they had no separate proof to the contrary.

I find support for this decision as the legal representative only speculated that the landlords must have lived at the service address as the home was large and the occupants bore a family resemblance.

Additionally, I find that these issues were previously decided upon by another arbitrator, as the tenants received a decision and monetary order listing the full name of K(full name) A. It was their choice to apply to change the name of that landlord.

As this matter was previously decided upon, I find I am bound by that decision and cannot alter it.

For the above reasons, I therefore find the tenants submitted insufficient evidence that they served the landlords their application for dispute resolution and notice of this hearing in a manner required by the Act.

I also determined that this matter was previously decided by another arbitrator in a decision which has been referenced in this decision.

The tenants' application is dismissed with leave to reapply. This decision does not extend any applicable time limits under the Act.

I do not grant the filing fee.

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: December 24, 2019

Residential Tenancy Branch