



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenants' security deposit, pursuant to section 38.

The landlord did not attend this hearing, which lasted approximately 21 minutes. The two tenants, male tenant ("tenant") and "female tenant" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

From the beginning of the hearing, the tenant was upset with my questions. Every time I asked him a question, he would get angry, refuse to answer the question, and argue with me.

When I asked the tenant if anyone was participating in the conference with him, he yelled and said that his wife and two kids were there. When I asked whether his wife was the co-applicant tenant, he yelled that it was his wife. When I asked whether he was planning to call any witnesses at the hearing, he became angry and said that he had uploaded all of his evidence online. When I informed him that I had received his documentary evidence, but I had to confirm whether he wanted to call any witnesses so I could note down the information, he became upset. When I asked why he was upset with all of my questions and refusing to answer them, he said that he was not upset.

Both the tenant and the female tenant were talking at the same time during the hearing. I notified the tenant that I could not hear when they were both speaking at the same time. The tenant then yelled at the female tenant to stop talking at the same time as him.

Throughout the conference, the tenant interrupted me, talked at the same time as me, argued with me, and yelled at me. I cautioned the tenant multiple times to stop interrupting me and to answer my questions or I would end the conference.

At the end of the hearing, the tenant asked for my name. I notified him that I had already provided it to him at the beginning of the hearing. However, I provided my name again and spelled it for the tenant. I notified him that my name would also be on a copy of this written decision that would be sent to him after the hearing was over. The tenant then stated that he would be getting a lawyer and said, "I'll see to it that you get in trouble." I thanked the tenant for attending the hearing and notified him that I was closing the conference.

I caution the tenant to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and he may be excluded from future hearings. In that event, a decision will be made in the absence of the tenant.

The tenant stated that the landlord was served with the tenants' application for dispute resolution hearing package by registered mail on August 30, 2019, to an address provided to the tenants at the beginning of the tenancy. He provided a Canada Post receipt and confirmed the tracking number verbally during the hearing.

When I asked the tenant what documents were served to the landlord, he said that it was all the documents he uploaded online. When I asked him to confirm which documents, he became upset and refused to answer. When I attempted to confirm which documents were served and named them, the tenant became angry and refused to answer whether he served them.

When I asked the tenant what address the application was sent to, he became upset. He said that it was the address that the landlord gave him and one of the two properties that she owned. When I asked him to point me to the document in the tenants' evidence that confirmed this service address, the tenant became upset and did not provide a reference. He stated that the rental unit was given as the landlord's address in the parties' written tenancy agreement, but it was sold.

When I asked the tenant about his substituted service application, dated November 26, 2019, and uploaded by the tenant as evidence for this hearing, he said that his lawyer made that application. He asked, "is that application gonna screw me over now?" When I asked him why the substituted service application identified the same address for the landlord that he said he sent his application to, he said it was an old address given to him at the beginning of the tenancy. The tenants' application for substituted service was dismissed with leave to reapply, for lack of evidence, pursuant to a decision made by an Adjudicator on November 29, 2019. The tenant did not reference this decision during the hearing.

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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report.***

The tenants were unable to show when and where they obtained the landlord's address. This was a different address than the rental unit service address identified by the landlord in the parties' written tenancy agreement supplied by the tenants. The tenant stated that the rental unit was sold. The landlord did not appear at this hearing to confirm receipt of the tenants' application. The Canada Post tracking number supplied by the tenants indicates on the Canada Post website that the mail was returned to sender. The tenants did not supply a copy of the printed tracking report, as per Residential Tenancy Policy Guideline 12, above.

Accordingly, I find that the tenants failed to prove service in accordance with section 89(1) of the *Act* and Residential Tenancy Policy Guideline 12 and the landlord was not served with the tenants' application.

I notified the tenant that the tenants' application was dismissed with leave to reapply. I notified him that the tenants would be required to file a new application and provide proof of service at the next hearing, if they choose to pursue this matter further.

When I notified the tenant about my decision, he became upset. He stated that the conference was not over and that I could not dismiss the tenants' application. I notified

the tenant again that the tenants' application was dismissed since I could not confirm service, and the tenants could reapply.

Conclusion

The tenants' entire 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: December 23, 2019

Residential Tenancy Branch