



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:50 p.m. to enable the tenants to call into this hearing scheduled for 1:30 p.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he served the tenants with the Application for Dispute Resolution by registered mail on October 16, 2019. Tracking numbers for the mailings are provided on the cover page of this decision. The landlord provided evidence that shows the mailings were both returned to the landlord as unclaimed.

The landlord testified the tenants never formally provided him with a forwarding address at any time before or after the tenancy ended. The landlord obtained the tenants'

forwarding address by searching the tenants' names on a social media site and by doing a title search of the property one of the tenants had shown on their social media site. The landlord further stated that there was a previous arbitration heard where they had successfully served the tenants at the same address.

The landlords did not provide any documentary evidence from the social media site, a copy of the results of the land titles search or proof of satisfactory service to a previous arbitrator into evidence for this hearing.

Analysis

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.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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 document]...*

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 tenants have been served with the application for dispute resolution. The landlord has not provided sufficient evidence to satisfy me the tenants were served with the Application for Dispute Resolution in accordance with section 89 of the Act. Consequently, I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

Conclusion

The landlord'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: February 06, 2020

Residential Tenancy Branch