



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDCT, MNSD, FFT, MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on January 8, 2020 for:

1. An Order for the return of personal property - Section 65;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the return of the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on January 19, 2020 for:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

Both Parties appeared and were each given full opportunity to be heard, to present evidence and to make submissions

Facts

The Tenant submits in its application for dispute resolution that the tenancy ended on December 1, 2019. The Tenant sets out the dispute address as the Tenant’s address

on its application. The Tenant states that it served its application and the notice of hearing to the Landlord by posting it on the Landlord's door. The Tenant does not know when that occurred. The Tenant states that it has obtained the return of its personal property but that some items are missing. The Landlord states that it did not receive the Tenant's application.

The Landlord submits in its application that the tenancy ended on January 7, 2020. The Landlord states that it served its application for dispute resolution and notice of hearing to the Tenant by sending it registered mail to the rental unit address. The Landlord states that the Tenant did not provide a forwarding address. The Tenant states that it did not receive the Landlord's application.

The Tenant provided its forwarding address to the Landlord at the hearing. The Landlord confirmed that this address was recorded by the Landlord.

Issue

Have the Parties served each other with their applications for dispute resolution in accordance with the Act?

Analysis

The Act provides the following requirements for service of the application for dispute resolution:

- 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) [*director's orders: delivery and service of documents*].

As the Tenant did not serve its application for dispute resolution in any of the above methods and as the Tenant did not provide evidence of the date of that service, I find that the Tenant has not served the application as required under the Act. As the Tenant has just now provided its forwarding address, I dismiss the Tenant's application with leave to re-apply. Leave to re-apply is not an extension of any applicable limitation period.

The Landlord cannot serve the Tenant at the dispute address when the Tenant no longer resides at that address as this is not service to where a person resides. As the Landlord did not serve its application for dispute resolution in any of the above methods, I find that the Landlord has not served its application as required under the Act. I therefore dismiss the Landlord's application with leave to re-apply. Leave to re-apply is not an extension of any applicable limitation period.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord has received the Tenant's forwarding address at this hearing, I deem the Landlord to have received that address as required under the Act. The Landlord has 15 days from this hearing date to deal with the security deposit.

Conclusion

Both applications are 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 Act.

Dated: June 04, 2020

Residential Tenancy Branch