Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tricando Management & Marketing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL, MNDCL, FFL

Introduction

In this dispute, the landlord sought compensation in the amount of $7,053.00 against their former tenant, under section 67 of the *Residential Tenancy Act* (the "Act"). The landlord also sought recovery of the $100.00 filing fee pursuant to section 72 of the Act.

The landlord applied for dispute resolution on February 20, 2020 and a dispute resolution (arbitration) hearing was held on July 20, 2020. The landlord's agent, his wife, and the tenant attended the hearing.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the preliminary issue of this application.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding and Evidence

The tenant testified that he only became aware of the landlord's application last week when he picked up the Notice of Dispute Resolution Proceeding package from his parents. The landlord had served the Notice of Dispute Resolution Proceeding package on his parents' address, and not his.

The landlord testified that he served the Notice of Dispute Resolution Proceeding package on the tenant and that the tenant signed for the package on April 1, 2020. A copy of a Canada Post registered mail signature confirmation page was submitted into evidence by the landlord (the tenant did not have a copy of this) which indicated that someone signed for the package on April 1, 2020. However, the tenant reiterated that it would not have been his signature, and that one of his parents would have signed for it. The landlord briefly acknowledged that the tenants' parents might have signed.

I note that the Residential Tenancy Branch internal file notes indicate that the Notice of Dispute Resolution Proceeding was provided to the landlord by way of pick-up on March 23, 2020.

I further note that of the 475 items of documentary evidence submitted by the landlord, not a single document had been submitted before July 5, 2020, and in several cases were submitted (to the Residential Tenancy Branch) as late as July 15, 2020.

The landlord requested an adjournment of this matter in order for, presumably, the tenant to have an opportunity to review the evidence and to respond. In addition to his request for an adjournment, the landlord explained a rather frustrating process of trying to upload and submit evidence to the Branch's online Dispute Management System. He opined that the entire laborious process was unreasonable. He also suggested that someone from the Branch ought "to come down and inspect" rental units at the start and end of tenancies, and that there is an unfair administrative burden placed on parties.

The tenant objected to an adjournment and submitted that this matter ought to be dismissed on the basis that he was not served in compliance with section 89 of the Act. The landlord objected to my asking the tenant to clarify his position, saying that my question was leading; it should be noted that the tenant had, in fact, earlier said that the matter ought to be dismissed, and that my question was one of a clarifying nature, versus that of a leading question.

Section 59(3) of the Act states that

> Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

In this case, the Notice of Dispute Resolution Proceeding was made available to the landlord on March 23, 2020, and it appears he mailed the notice by way of Canada Post registered mail. Somebody picked up the mail on April 1, 2020, but it was not the tenant.

Section 89(1) of the Act states that

> 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]*.

Finally, Rule 3.5 of the *Rules of Procedure,* under the Act, states that "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."

In this dispute, I find that the landlord did not serve the tenant in compliance with the Act, and who acknowledged that the entire package may have ended up being received by the tenant's parents. The tenant does not reside at this address, which explains why the tenant only received everything less than a week before the hearing.

Procedural fairness has, as one of its important tenets, the principle that a party to a claim must have an adequate opportunity to be heard before a decision is made affecting that person's interest, providing there is a sufficiently direct impact on their interest. This means that, when a decision is going to be made that impacts a person, they have a right to participate, to know what information the arbitrator is relying on for its decision and to be given a chance to respond to that information.

Here, the respondent tenant was not served with either the Notice of Dispute Resolution Proceeding or any of the evidence on which the landlord intended to rely in a manner that complied with the Act or the *Rules of Procedure.* Moreover, I find that the landlord, despite having made an application for dispute resolution on February 20, 2020 (though he cannot be faulted for the month delay that followed), unreasonably delayed the submission of evidence to the Residential Tenancy Branch.

Given that the landlord failed to serve the tenant with the Notice of Dispute Resolution Proceeding package in compliance with sections 59(3) and 89 of the Act, I hereby dismiss the landlord's application without leave to reapply.

Conclusion

I dismiss the landlord's application without 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: July 20, 2020

Residential Tenancy Branch