



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant pursuant to sections 67, 38 and 72 of the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation pursuant to a section 49 notice to end tenancy for landlord's use of property, for the return of double the security deposit and for the recovery of the filing fee.

The tenant attended this hearing. The landlord did not attend the hearing. The tenant was given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary and procedural matters

As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. Section 59 (3) of the *Residential Tenancy Act* states that 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.

The purpose of serving a Notice of Hearing and Application for Dispute Resolution to the respondent is to notify the person being served of matters relating to arbitration and to provide the person with an opportunity for rebuttal.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent to the landlord by registered mail on August 08, 2020. The tenant provided a copy of the tracking slip.

The tenant testified that she mailed the package to the rental unit and the reason for mailing it to the rental unit was that the landlord had served her with a s.49 Notice to End Tenancy for landlord's use of property for the purpose of moving into the rental unit. The tenant stated that therefore, she assumed that the landlord had moved into the rental unit.

However, the tenant has also applied for 12 months rent as compensation because she believes that the landlord did not use the rental unit for the purpose stated on the s.49 notice, which is that the landlord intended to move into the rental unit. Despite her belief, the tenant mailed the notice of hearing package to the rental unit.

Rule 3.5 of the *Rules of Procedure* addresses proof of service required at the dispute resolution hearing. At the hearing, the parties must be prepared to demonstrate to the satisfaction of the arbitrator that other party was served with all evidence as required by the Act and these Rules of Procedure.

In this case the tenant stated that she had served the landlord with the notice of hearing package by registered mail to the rental unit and provided a copy of the tracking slip.

Based on the tenant's application for compensation in the amount of 12 months' rent, I find that the tenant believes that the landlord did not move into the rental unit, and therefore did not use the rental unit for the purpose that was stated on the notice to end tenancy. Accordingly, I find that it is possible that the landlord does not live in the rental unit and may have not received the notice of hearing package.

Conclusion

I am not satisfied that the landlord was served the notice of hearing and therefore, I dismiss this application with leave to re-apply.

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: November 17, 2020

Residential Tenancy Branch