



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant pursuant to sections 67 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 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. The tenant provided a copy of the tracking slip. The tenant testified that he mailed the package to the rental unit and it was returned to him.

The reason for mailing it to the rental unit was that the address for the landlord on the s.49 Notice to End Tenancy was the rental unit. Upon review of the Notice to End Tenancy, I found that it is dated March 01, 2019 and the tenant mailed the Notice of Hearing package on July 16, 2020, which is over a year later. It is possible that the landlord no longer resides at the rental unit.

In his online application the tenant indicated that the landlord lived in China. Despite knowing that the landlord was out of the country, the tenant mailed the package to the rental unit.

The tenant stated that during the tenancy, he communicated with the landlord by email and therefore he also sent the package to the landlord by email. The landlord did not respond to the tenant's email. The tenant did not file proof of having served the landlord by email.

Under the order of the Director dated March 18, 2020, a document could be served by email for the duration of the state of emergency due to the Pandemic. The tenant served the landlord with the hearing package during the Pandemic and therefore email was a method of service at that time.

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 he had served the landlord with the notice of hearing package by email but did not provide proof of having done so. In addition, the tenancy ended on May 31, 2019 and it is possible that the landlord's email address may have changed during the 14 months that has elapsed from the end of tenancy to the service of the hearing package.

Issues to be decided

Was the landlord properly served with the notice of hearing and the tenant's application for dispute resolution? If so, is the tenant entitled to a monetary order?

Background and Evidence

The tenant testified that the tenancy started on March 01, 2018 and ended on May 31, 2019 pursuant to a two-month notice to end tenancy for landlord's use of property.

In April 2020, the tenant applied for the return of the deposit and compensation pursuant to a s.49 notice to end tenancy. At the tenant's request his application for compensation was dismissed with leave to reapply. The tenant made this application for compensation on July 15, 2020 some 14 months after the end of tenancy.

Analysis

Section 89 (1) of the *Residential Tenancy Act* entitled "How to Give or Serve Documents".

Section 89(1) states

- 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*].

The tenant mailed the Notice of Hearing package to the landlord on July 16, 2020 by registered mail. The package was returned to the tenant as "unclaimed". Based on the testimony of the tenant, I find that the tenant was aware that the landlord lives in China and not in the rental unit. Since the tenant mailed the package 14 months after the end of tenancy I find on a balance of probabilities, that it is more likely than not that even if the landlord had resided in the rental unit after the end of tenancy, she may have moved out prior to receiving notification of the registered package.

The tenant also did not file proof of having served the landlord by email.

Conclusion

I am not satisfied that the landlord was served the notice of hearing package 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 05, 2020

Residential Tenancy Branch