Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDCT, MNRT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for the cost of emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant 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 tenant and I were the only ones who had called into this teleconference.

Preliminary Issue- Service

The basis for the tenant's section 67 claim, is that the landlord did not move into the subject rental property in accordance with the Two Month Notice to End Tenancy for Landlord's Use of Property, resulting in a section 51 claim.

The tenant testified that new tenants moved into the subject rental property in July of 2020.

Section 5 of Exhibit H of the tenant's written submissions states in part:

> On December 6, 2019, I received information from my agent (who handled the last Residential Tenancy Branch hearing) about the Landlord saying under oath that his current address is [an address other than that of the subject rental property]. I drove to [the address provided by the landlord in the hearing] and I spotted the Landlords vehicle (a truck that I have known him to drive) parked in the driveway of [the address provided by the landlord in the hearing].

The tenant testified that she served the landlord with this application for dispute resolution at the subject rental property, via registered mail on December 14, 2020. A receipt for same was entered into evidence. The tenant entered into evidence the tracking history of the above package which indicates that it was not picked up by the landlord.

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]...*

Based on the evidence provided by the tenant, I find that the tenant has not proved, on a balance of probabilities, that the landlord was served at an address at which the landlord resides or carries on business. I find that if the landlord did not reside at the subject rental property, as testified by the tenant, the landlord could not reasonably have been expected to regularly check the mail at the subject rental property. Pursuant to my above findings, I dismiss the tenant's application with leave to reapply.

Conclusion

I dismiss the tenant's application to recover the $100.00 filing fee without leave to reapply.

The remainder of the tenant'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 01, 2021

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Residential Tenancy Branch