



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

When the hearing began, only the landlord's agent had called into the hearing. The landlord said they had just received notice that there was hearing three days prior to the hearing.

Shortly thereafter, the tenant phoned into the hearing and the matter of the service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) to the landlord was considered.

The tenant's application was filed on December 7, 2020, and she was provided the application package from the Residential Tenancy Branch (RTB) to serve the landlord on December 11, 2020. The tenant said she was told to serve her application package by email.

The tenant said that she asked the landlord their email address and they refused.

She said that she finally sent her Notice of Hearing by text message to the landlord's son on March 26, 2021.

The landlord said that the landlords live on the same property as the tenant and she could have hand delivered the application package.

Analysis and Conclusion

I find section 89(1) of the Act applies in this case. This section of the Act, in place at the time of the tenant filed her application, states as follows:

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*].

In other words, the tenant was required to serve her application for dispute resolution by personal service to the landlord or landlord's agent or by sending the documents to the landlord by registered mail, within three days of the documents being made available to her.

The tenant confirmed that she only sent the Notice of Hearing by text message to the landlord's son three days prior to the hearing.

For these reasons, I find the tenant submitted insufficient evidence that her application package was served to the landlord according to the requirements of section 89(1) of the Act and within three days of receiving the application package. I therefore dismiss the tenant's application, **with leave to reapply**, due to service issues as described above.

I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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: March 29, 2021

Residential Tenancy Branch