



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL-S, MNDCL-S, FFL, MNSD-DR

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and to keep all or part of the security deposit?

Should the security deposit be returned to the Tenant?

Background and Evidence

The Landlord stated that on December 17, 2020 the Dispute Resolution Package was sent to the Tenant, via registered mail, at the service address noted on the Application. Upon being advised that those documents were not provided to him by the Residential Tenancy Branch until December 23, 2020, he stated that he must have mailed the documents a few days after December 17, 2020.

The Landlord did not submit Canada Post documentation that corroborates his testimony that documents were served by registered mail. The Landlord was unable to locate his Canada Post receipt, although he was given ample time during the hearing to locate that receipt.

The Landlord stated that the Tenant served him with her Application for Dispute Resolution in December of 2020.

Analysis

The teleconference hearing was scheduled to commence at 1:30 p.m. today. The Landlord was present at the scheduled start time. By the time the teleconference was terminated at approximately 1:55 p.m., the Tenant had not appeared.

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 Landlord and I were the only ones who had dialled into this teleconference.

I find that the Tenant failed to diligently pursue her Application for Dispute Resolution and I therefore dismiss her Application for Dispute Resolution, without leave to reapply.

The purpose of serving the Application for Dispute Resolution to a tenant is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
- or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

When an Applicant serves a Respondent with an Application for Dispute Resolution pursuant to section 89(1)(c) or 89(1)(d) of the *Act*, the Applicant would typically meet the burden of proving service by submitting documentation from Canada Post that establishes a package was mailed to the Respondent. In some circumstances, I will find that the Applicant has met the burden of proof if the Applicant is able to cite a tracking number from the Canada Post receipt.

I find that, in these circumstances, the Landlord has failed to meet the burden of providing his Application for Dispute Resolution was served to the Tenant in accordance with section 89(1)(c) or 89(1)(d) of the *Act*. In reaching this conclusion I was influenced by the absence of any Canada Post documentation that corroborates the Landlord's testimony it was sent to the Tenant by registered mail and by the Landlord's inability to cite a tracking number for the alleged mailing. In reaching this conclusion I was further influenced by the Landlord's inability to declare when the documents were allegedly mailed.

As the Landlord has failed to establish the Application for Dispute Resolution was properly served to the Tenant, I am unable to proceed in the absence of the Tenant. The Landlord's Application for Dispute Resolution is therefore dismissed, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution in regard to the issues in dispute at these proceedings.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, with leave to reapply.

The Tenant's Application for Dispute Resolution is dismissed, 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: April 27, 2021

Residential Tenancy Branch