



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, FFT

Introduction and Preliminary Matters

On June 2, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a return of personal property pursuant to Section 65 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant A.S. attended the hearing. Both Landlords attended the hearing as well, with K.C. attending as an agent for the Landlords. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties, with the exception of K.C., provided a solemn affirmation.

The Tenant advised that she could not remember if she served each Landlord with a Notice of Hearing package, but she believes she may have mailed something. She was not sure when she did this and she did not have any proof of service to corroborate her testimony. As well, no evidence was submitted for consideration on this file. K.C. advised that the Landlords were never served a Notice of Hearing package and they only found out about the hearing when they received notification of the rescheduled hearing from the Residential Tenancy Branch.

Records indicate that these Notice of Hearing packages were made available to the Tenants for service on June 16, 2021 with information to serve these packages by June 19, 2021. As well, records indicate that the Tenants contacted the Residential Tenancy Branch on June 25, 2021 to state that these packages had not been served to the Landlords yet. They were provided with the option to cancel the Application and reapply or to serve the packages late, with the understanding that this could have an impact on

the success of their Application. The notes confirm that the Tenant “is going to serve late.”

When reviewing the testimony of the parties before me in conjunction with these notes, I am satisfied that the Tenants have not served the Notice of Hearing packages to the Landlords, within 3 days of the packages being made ready on June 16, 2021, pursuant to Rule 3.1 of the Rules of Procedure. Furthermore, I am also satisfied that the Tenants were cautioned almost ten days later that serving these documents may not be acceptable and that they were provided with an alternative. However, they still chose to proceed with serving the Notice of Hearing packages.

As the Tenant has attended the hearing and was unsure if they even served these packages, without any evidence from them to corroborate service, I find the Landlords’ testimony that they were never served these packages to be more likely. As such, I am not satisfied that the Landlords were served with the Notice of Hearing packages in accordance with the Rules. As the Tenants had an opportunity to withdraw their Application and reapply, but as they chose not to and then did not serve the Notice of Hearing packages anyways, I dismiss the Tenants’ Application without leave to reapply.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant’s Application 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 *Residential Tenancy Act*.

Dated: October 1, 2021

Residential Tenancy Branch