



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL -S, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the tenant's security deposit.

Both the landlord and one of the named tenants appeared for the hearing. The landlord was also assisted by her daughter who undertook some of the landlord's duties and communications with the tenant. The landlord's witness was excluded with instruction to wait until called. The parties were affirmed. The parties had the opportunity to make relevant submissions.

Preliminary and Procedural Matter – Service of hearing materials

The landlord sent two proceeding packages, with a Monetary Order worksheet and evidence, to the two tenants in a single courier envelope on September 20, 2021. The landlord prepared a subsequent Monetary Order worksheet in October 2021 and gathered additional evidence and delivered it to one of the tenants in person on October 27, 2021. The tenant confirmed receipt of these packages.

I noted that the sum appearing on the Monetary Order worksheet prepared in October 2021 was several thousand dollars greater than the Monetary Order worksheet prepared in September 2021. The landlord confirmed she intended to increase her claim against the tenants, explaining the total damage claim had not yet been determined as of September 2021. I noted that I did not see an Amendment to an Application for Dispute Resolution submitted by the landlord. The landlord acknowledged she did not submit an Amendment or serve one to the tenant(s).

The landlord also acknowledged that some amounts appearing on the October 2021 Monetary Order worksheet were based on estimates and the repairs are on-going as of the date of the hearing.

The tenant described the landlord's evidence that was received in the two packages as being significant and not entirely organized as not all pages were numbered.

The landlord submitted that she had also sent the same packages to the tenant via email; however, both parties acknowledged the tenant had not given her consent or agreement to be served by email. Rather, the tenant had been communicating with the landlord or her daughter via email but she did not agree to be served with documents via email. As provided in Residential Tenancy Policy Guideline 12: *Service provisions*, it states, in part:

Email service

- o To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

Based on what both parties described, I was unsatisfied that the tenant had provided an email address to the landlord specifically for the purpose of being served documents. As such, I find the sending of materials to the one tenant via email to be insufficient service and the landlord was required to serve in one of the other permissible ways provided under section 89(1) of the Act.

As for the tenant's evidence, I heard it was sent to the landlord via courier on October 25, 2021 and delivered on October 26, 2021. The tenant acknowledged that her evidence package was significant in volume and she did not number the pages or prepare an index.

Serving a Notice of Dispute Resolution Proceeding and other required documents, including evidence, is to be done in a manner that complies with the Act and Rules of Procedure. The Rules of Procedure were developed with a view to ensure a fair proceeding and in keeping with the principles of natural justice.

Section 89(1) of the Act requires an applicant to serve an Application for Dispute Resolution pertaining to a monetary claim either in person, by registered mail, or by

email to an address provided for the purpose of servicing documents, or as authorized in a Substituted Service Order. Section 89(1) of the Act does not allow service by courier. Further, each respondent must be served separately and it is not sufficient to serve two packages in a single envelope, even if the respondents are related or married.

Where an applicant seeks to increase a Monetary claim, the claim must be amended in accordance with Rule 4 of the Rules of Procedure to ensure a fair proceeding. Amending a claim is to be accomplished by way of an Amendment to an Application for Dispute Resolution that is served to each respondent in a manner that complies with section 89 of the Act at least 14 days before the hearing [Rule 4.1 and 4.6].

Evidence may be served in a manner that complies with section 88 of the Act; however, section 88 does not permit service by courier. Also, the latest date for serving evidence is 14 clear days before the hearing for the applicant and seven clear days before the hearing for the respondent.

Also of consideration is that evidence must be organized pursuant to Rule 3.7 of the Rules of Procedure. Especially where evidence submissions are considerable in volume, I would expect to see the evidence pages numbered and indexed.

After hearing from both parties with respect to serve of their respective materials, I find the parties failed to serve each other using a permissible method of service; the landlord did not serve each respondent separately; the landlord did not amend the claim pursuant to the Rules of Procedure; the landlord's service of evidence on October 27, 2021 was less than 14 clear days before the hearing; and, organization of the evidence was lacking for both parties. For these reasons, I declined to proceed to hear this matter and it is dismissed with leave to reapply.

During the hearing, I heard consistent testimony from both parties that the tenant authorized the landlord to retain the security deposit, in writing, on the condition inspection report. As such, I make no order for return of the security deposit even though I have dismissed the landlord's application.

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, 2021

Residential Tenancy Branch